91-948

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

CHURCH OF THE LUKUMI BABALU AYE, INC. and ERNESTO PICHARDO,

Petitioners,

vs.

CITY OF HIALEAH,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. In *Employment Division v. Smith*, 110 S. Ct. 1595 (1990), this Court held that laws restricting religious exercise must be neutral and generally applicable. Is that rule violated by ordinances that forbid the killing of animals for ritual or sacrifice, but permit the killing of animals for a wide variety of secular reasons?

2. What must the City prove to show a compelling interest sufficient to justify a law that discriminates against religion in violation of *Employment Division v. Smith*? In particular:

   a. Must the compelling interest justify the discrimination, or is it sufficient to have an interest that would justify a nondiscriminatory general prohibition?

   b. Must the compelling interest be of extraordinary importance, or is any legitimate interest sufficient?

   c. Must the compelling interest be based on actual harms, or is it sufficient to identify risks and challenge worshipers to prove that the risks can never come to fruition?

PARTIES TO THE PROCEEDING

All parties are named in the caption of the case. The Church of the Lukumi Babalu Aye, Inc. has no parent corporations or subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Ernesto Pichardo and Church of the Lukumi Babalu Aye, Inc. petition for a writ of certiorari to review the decision of the court of appeals in this case.

OPINIONS BELOW

The opinion of the district court (App. A3) is reported at 723 F. Supp. 1467 (S.D. Fla. 1989). The opinion and order of the court of appeals (App. A1, A50) are unreported.

JURISDICTION

The court of appeals entered judgment on June 11, 1991. It denied a timely petition for rehearing on August 23, 1991. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) (1988).

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

This case involves the validity of Ordinances 87-40, 87-52, 87-71, and 87-72 of the City of Hialeah, Florida. Ord. 87-40 adopts by reference Fla. Stat. Ann. ch. 828. Of the provisions incorporated from chapter 828, petitioners challenge only § 828.12. Hialeah Resolutions 87-66, 87-90, and 87-109 were in pari materia with the challenged ordinances. The disputed portions of the ordinances, and relevant portions of two of the resolutions, are set out in the Appendix.

Petitioners do not challenge the provisions on humane slaughter in Fla. Stat. Ann. §§ 828.22, 828.23, and 828.24 (1976 & Supp. 1991), incorporated into Ord. 87-40. Relevant portions of these statutes are set out in the Appendix for comparison.

The case arises under the Free Exercise Clause, U.S. Const., amend. I, and 42 U.S.C. § 1983 (1988). These provisions are also set out in the Appendix.

STATEMENT OF THE CASE

This is a suit to enjoin enforcement of four ordinances enacted to prevent the practice of petitioners' religion in the City of Hialeah.[1] These ordinances forbid the killing of animals for purposes of ritual or religious sacrifice. In contrast, the City and the State of Florida permit the killing of animals for almost any plausible secular purpose.

The district court upheld the ordinances against petitioners' free exercise challenge. The court of appeals accepted the district court's findings of fact and affirmed its judgment "for the reasons set forth in Parts A, B, C(1) and C(3) of the 'Conclusions of Law' in the district court's memorandum opinion." App. A2. Thus, except for Part C(2) of the opinion, the reasoning of the district court is also the reasoning of the court of appeals.

Petitioners are the Church of the Lukumi Babalu Aye, Inc., and Ernesto Pichardo, one of the priests of the Church. The Church and its members practice an ancient African religion variously known as Yoba, Yoruba, or Santeria. App. A4. Yoruba originated some four thousand years ago. *Id.* at A5. It came to the Caribbean with slavery, *id.*, and to the United States with refugees from the Cuban revolution, *id.* at A6. Santeria and Lukumi are Cuban names for the religion. Roger Bastide, *African Civilisations in the New World* 115 (P. Green trans. 1971).

There are fifty to sixty thousand adherents of Santeria in South Florida, and an unknown number of

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[1] Jurisdiction in the district court was based on 28 U.S.C. § 1331 (1988) and 28 U.S.C. § 1343 (1988).

adherents to other religions that practice animal sacrifice. App. A6. There may be a hundred million Santeria believers world wide. R10-392.[2]

An integral part of Santeria is the sacrifice of chickens, pigeons, doves, ducks, guinea fowl, goats, sheep, and turtles. *Id.* at A9. Animals are sacrificed for birth, marriage, and death rites, for the cure of the sick, for the initiation of new members or priests, and for an annual celebration. R11-626, R12-810. The faith could not survive without animal sacrifice, because sacrifice is essential to the initiation of new priests. R12-862.

Because of persistent hostility and discrimination, Santeria has remained underground in Cuba and the United States. App. A5-A7. This case was precipitated when petitioners leased an abandoned used car lot and announced plans to open a church. The City responded with three resolutions and four overlapping ordinances restricting the religious sacrifice of animals. App. A52-A56. These ordinances were enacted "in a mob atmosphere." App. A27. Angry speakers denounced the Church and misstated its practices. One speaker said that if the Council permitted the Church to worship, the country would "regress into paganism." Pl. Ex. 10 at 4. Another said "the city would not please God." *Id.* at 5. Councilman Martinez argued that if the religion were "not permitted in Cuba, why bring it to the United States?" *Id.* at 6.

Following a nine-day bench trial, the district court held that the ordinances were intended to prevent religious sacrifice of animals, App. A28, that the ordinances burden petitioners' religion, *id.* at A42, and that "the ordinances are not religiously neutral," *id.* at

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[2] Citations to the record in the district court are by volume and page number: in this instance, Record volume 10 at page 392.

A23. But it concluded that the City is not required to treat religion with neutrality. *Id.* at A40. It went on to hold that the ordinances are justified by several compelling interests. In reaching this conclusion, the district court equated compelling interest with any legitimate public policy. *Id.* at A44-A45.

First, the district court found two risks to health. The public health risk was that some unidentified practitioners of animal sacrifice sometimes dispose of carcasses in public places. *Id.* at A43. However, the district court found that there "have been no instances documented of any infectious disease originating from the remains of animals being left in public places." *Id.* at A18. The private health risk was that worshipers often eat the uninspected meat of sacrificed animals. *Id.* at A43-A44. But defendants presented no evidence that anyone had ever become ill from eating this meat.

Second, the district court held that the City had a compelling interest in protecting animals. The animals are sacrificed by cutting the carotid arteries. *Id.* at A12. Cutting the carotid arteries is the humane method prescribed by Florida statute. Fla. Stat. Ann. § 828.23(7)(b) (1976). But the district court found that "there is no guarantee that a person performing the sacrifice in the manner described can cut through both carotid arteries at the same time." App. A13. Because of this and related uncertainties, the district court found that not all animals would die instantly. *Id.* at A13-A14, A45. It also found that the animals experience fear before the sacrifice, *id.* at A14, A45, and that petitioners could not guarantee that suppliers and other churches would care for the animals humanely before the sacrifice, *id.* at A46 & n.58.

Third, the district court found a compelling interest in preventing animal sacrifice in areas "not zoned for slaughterhouse use." *Id.* at A45. The court did not explain what this interest was or why it was compelling. The used car lot that petitioners selected for their

church was zoned for churches. *Id.* at A24 n.41. Moreover, parts of the city are rural, and there are farms within the city limits. R10-458, R15-1332.[3]

This case was tried before the decision in *Employment Division v. Smith*, 110 S. Ct. 1595 (1990); the appeal was briefed and argued after *Smith*. Petitioners argued in the court of appeals that the ordinances violated *Smith* because they were neither neutral nor generally applicable. The City conceded that "neither the State of Florida nor the City of Hialeah has enacted a generally applicable ban on the killing of animals." Br. of Appellee in Ct. App. 21. Even so, the court of appeals found it unnecessary to "decide the effect of *Smith*." App. A2 n.1. Rather, it held that the ordinances were justified by compelling interests even if they violated *Smith*. The court of appeals relied on the district court's opinion with respect to three of the four compelling interests -- health risks, harm to animals, and zoning.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts With This Court's Rule Against Discriminatory Regulation of Religion.

Concurring separately in *Employment Division v. Smith*, Justice O'Connor said that "few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such." 110 S. Ct. 1595, 1608 (1990). But that is exactly what Hialeah has done here. This case began when Petitioners announced their intention to worship in public. The City responded with

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[3] The district court also held that children attending the sacrifices might suffer psychological damage. App. A47. This holding was contained in the one part of the opinion (C(2)) on which the court of appeals expressly disclaimed any reliance. App. A2.

ordinances designed to suppress religious sacrifice of animals without affecting any other resident of Hialeah.

Hialeah forbids the religious sacrifice of animals; it does not forbid the killing of animals for food, for recreation, or for human convenience. The essence of the offense under Hialeah's ordinances is killing an animal for "sacrifice" in a "ritual or ceremony." All the issues in this case flow from this distinction between sacrificial and non-sacrificial killings of animals. The four overlapping, repetitive, and gerrymandered ordinances, and the after-the-fact rationalizations based on alleged compelling interests that the City does not pursue in any other contexts, are all attempts to disguise the central distinction in a way that might escape judicial scrutiny.

A. The Holding in Smith. *Employment Division v. Smith* rewrote the law of free exercise. Such a major doctrinal shift inevitably gives rise to new questions and poses old questions in new ways. This case presents a question at the heart of *Smith*: when is a law "neutral and generally applicable."

Smith holds that a "neutral, generally applicable regulatory law" may be applied to religiously motivated conduct without compelling justification. *Id.* at 1601. But *Smith* gives new emphasis to the requirement that laws restricting religion be neutral and generally applicable. That requirement is now the principal constitutional protection for free exercise of religion. It is of great importance for this Court to clarify what it means by "neutral and generally applicable," and to clarify the consequences of finding that a restriction on religious exercise is not "neutral and generally applicable."

Neither of the courts below considered the implications of *Smith*. The district court could not do so, because *Smith* had not yet been decided. The court of appeals refused to do so, holding that it could decide this case without deciding the effect of *Smith*. App. A2

n.1. The court of appeals relied on the district court's belief, erroneous even before *Smith*, that government has no obligation to treat religion neutrally. *Id.* at A41.

In at least three formulations, seemingly aimed at slightly different aspects of the problem, this Court in *Smith* insisted on neutrality and general applicability. First, *Smith* says a law is unconstitutional if it singles out religion for special regulation:

> a state would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of "statutes that are to be used for worship purposes."

110 S. Ct. at 1599. The Court's hypothetical is this case: these ordinances forbid the killing of animals for worship purposes.

Second, a law is subject to stringent review if it is "specifically directed at [a litigant's] religious practice." *Id.* The Court elaborated on this point in a tax example, which it treated as equivalent to regulation:

> if prohibiting the exercise of religion . . . is *not the object* of the tax *but merely the incidental effect* of a generally applicable and otherwise valid provision, the First Amendment has not been offended.

Id. at 1600 (emphasis added). This standard appears to refer to legislative purpose -- the "object" of the law -- and perhaps also to whether the anti-religious effect is such a dominant part of the law that it cannot be characterized as incidental.

Third, *Smith* says that if the legality of conduct depends upon a person's reasons for acting, religious reasons must be included among the reasons that the

law allows. *Id.* at 1603. This was the Court's rationale for reaffirming the line of unemployment compensation cases beginning with *Sherbert v. Verner*, 374 U.S. 398 (1963). The states in those cases had accepted some reasons for quitting employment, but had refused to accept religious reasons. In *Smith*, the Court said that the unemployment compensation cases:

> stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason.

Id.

These three standards, given new emphasis in *Smith*, are mutually reinforcing aspects of the requirement that government be neutral toward religion. A law regulating religion must be religiously neutral on its face, it must be enacted for religiously neutral reasons, and if the state recognizes legitimate reasons for otherwise forbidden conduct, it must recognize religious reasons as equally legitimate.

B. The Ordinances. Two of the ordinances challenged in this case expressly subject religion to discriminatory regulation. All of them were enacted for the purpose of suppressing petitioners' religion. Most important, all of them are invalid because they recognize good and bad reasons for killing animals, and classify religious reasons among the bad. We will first review the discriminatory pattern common to all four ordinances, and then briefly review the text of each ordinance.

To implement its discriminatory purposes, the City created three statutory categories of killings of animals: to "sacrifice," meaning a killing for ritual; to "slaughter," meaning a killing for food consumption; and by implication, all other killings of animals.[4] Sacrifice is absolutely forbidden. Ord. 87-71 § 3 (App. A54). Slaughter is confined to properly zoned slaughterhouses, Ord. 87-72 § 3 (App. A54), to small producers of beef and pork, *id.* § 6 (App. A54), or to other licensed establishments, Ord. 87-52, Code § 6-9 par. 3 (App. A53). Killings that are neither for food nor for ritual are regulated only by Ord. 87-40 (App. A52), which incorporates pre-existing state law.

1. Discrimination among reasons for killing animals. Neither the State of Florida nor the City of Hialeah has enacted anything remotely approaching a generally applicable ban on the killing of animals. The laws of Florida and of Hialeah provide for slaughterhouses and the killing of animals for food, and meat is sold in Hialeah. *See, e.g.*, Fla. Stat. Ann. §§ 828.22 to 828.26 (1976 & Supp. 1991) (excerpted at App. A56-A57), incorporated in Ord. 87-40.

Hunting, fishing, and trapping in Florida are recreations of constitutional status, Fla. Const. art. 4 § 9, beyond the power of municipal regulation. *Bell v. Vaughn*, 21 So.2d 31 (Fla. 1945). The right to hunt on private land is a property right protected by the takings clause. *Alford v. Finch*, 155 So.2d 790, 793 (Fla. 1963). It is lawful to fish in Hialeah, and it is lawful for residents of Hialeah to go hunting and trapping and return with their kill. It is unlawful to help animals escape from hunters. Fla. Stat. Ann. § 372.705 (Supp. 1991).

Public officials may kill "injured or diseased" domestic animals. Fla. Stat. Ann. § 828.05 (Supp. 1991), incorporated in Ord. 87-40. Public officials and humane societies may kill "injured, sick, or abandoned domestic animals." *Id.* § 828.055, incorporated in Ord. 87-40.

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[4] See the definitions in Ordinances 87-52, 87-71, and 87-72 (App. A52-A54).

Public or private animal shelters and similar facilities may kill "stray, neglected, abandoned, or unwanted animals." *Id.* § 828.058, incorporated in Ord. 87-40. Animals removed from their owners may be killed "for humanitarian reasons" or if the animal "is of no commercial value." *Id.* § 828.073(4)(c)2, incorporated in Ord. 87-40. Animals may be killed or tortured "in the interest of medical science." *Id.* § 828.02 (1976), incorporated in Ord. 87-40. It is lawful to exterminate any animal that is "undesirable," *id.* § 482.021(17) (1991), and property owners may put out poison in their yards and enclosures, *id.* § 828.08 (1976). Hialeah has not interfered with the sale of lobsters to be boiled alive, R15-1336, and the record does not show that it has interfered with the practice of feeding live rats to pet snakes.

In short, there are many reasons for killing animals, and the City has divided them into acceptable and unacceptable reasons. Animals may be killed for food or for sport, because they are sick or injured, or merely because they are "stray," "unwanted," "undesirable" or "of no commercial value." According to the City, these are all acceptable reasons for killing animals. But religious faith is an unacceptable reason. Religion is almost the only unacceptable reason for killing an animal in Florida. Petitioners have found no reported prosecution in Florida for an unaggravated killing as distinguished from torture or cruelty to a living animal.[5] If the City

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[5] *But cf.* Fla. Atty. Gen'l Opinion 90-29 (1990), expressing the view that killing animals and using the carcasses to train greyhounds violates the law against "unnecessary" killings, Fla. Stat. Ann. § 828.12(1) (Supp. 1991) (App. A56), because this practice "is outside the usual course of business for this industry." This opinion appears to be inconsistent with *Kiper v. State*, 310 So.2d 42 (Fla. App. 1975), which holds that the use of live rabbits to train greyhounds is not "unnecessary" within

recognizes that there are acceptable reasons for killing animals, then it must classify religion among those acceptable reasons. This is the lesson of the unemployment compensation cases as reinterpreted in *Smith*. 110 S. Ct. at 1603.

The courts below erred because they misunderstood this fundamental point. The court of appeals relied on the district court's conclusion that the ordinances were valid "even if the use of the words 'ritual' and 'ceremony' are understood as targeting primarily religious conduct." App. A40. The district court thought that government could target religion because "[s]trict religious neutrality is not required." *Id.* The district court supported this proposition by citing establishment clause cases, including a summary affirmance upholding a statute that *exempted* ritual slaughter from restrictive regulation. *Id.*, citing *Jones v. Butz*, 419 U.S. 806 (1974),

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the meaning of § 828.12(1). The use of live rabbits is now forbidden by an express statutory provision; lack of necessity is not an element of the new offense. Fla. Stat. Ann. § 828.122(2)(a) (Supp. 1991).

The Hialeah ordinances may forbid the killing of animals in secular rituals, such as a fraternity initiation. But this purely hypothetical possibility does not affect the analysis. Hialeah does not satisfy its obligation of neutrality by treating religious reasons like the worst-treated, least-approved secular reasons. Rather, the status of being a constitutional right requires Hialeah to treat religious reasons at least as well as it treats fully acceptable secular reasons. In any event, there was no evidence that animals are killed in secular rituals in Hialeah. The district court recognized that the ordinances have no secular applications when it refused to make an exception for Santeria: "Any contemplated exception would have to cover all religions. The exception would, in effect, swallow the rule." App. A47.

affirming mem. 374 F. Supp. 1284 (S.D.N.Y. 1974), But none of the cases cited upheld a discriminatory *restriction* on religious exercise. This Court has held that legislatures may exempt religion from regulation, *Smith*, 110 S. Ct. at 1606; *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), but legislatures may not regulate religion except as an incidental application of neutral and generally applicable law.

An essential element of the offense of killing animals in Hialeah is the motive for the killing. Because its ordinances discriminate against religious motivation, they are invalid as applied to religious practice.

2. The purpose to suppress religion. The record is clear that these ordinances did not have a religiously neutral purpose. The district court found that these ordinances were "prompted by the Church's public announcement that it intended to come out into the open and practice its religious rituals," and that "the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by." App. A28. In the language of *Smith*, these ordinances were "specifically directed" to religious conduct; it was the "object," and not merely "the incidental effect" of these ordinances, to suppress worship services. 110 S. Ct. at 1600. The City claims that the ordinances are neutral *among* religions, because they forbid all religious sacrifice of animals. But they are not neutral *toward* religion. Their purpose was to suppress petitioners' religion and all similar religions in the City.[6]

3. The textual implementation of the discriminatory purpose. It is necessary to briefly review the text of the individual ordinances to show how each

[6] Even the claim of neutrality among religions is doubtful. An implicit exemption for Kosher slaughter is discussed *infra* at 27.

singles out religious sacrifice, thus squarely presenting the issue of neutrality and general applicability.

a. Ord. 87-71. § 3 of Ord. 87-71 makes it unlawful "to sacrifice any animal." App. A54. § 1 defines "sacrifice" to mean "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." *Id.* at A53. Because this ordinance singles out religious conduct for separate prohibition, it is facially unconstitutional. Only sacrifice is an offense, and under the definition, the essence of sacrifice is killing an animal in a "ritual or ceremony."[7]

b. Ord. 87-52. Ord. 87-52 is more complex, but the bottom line is the same. Ord. 87-52 added §§ 6-8 and 6-9 to the City Code. App. A52-53. Paragraph 1 of § 6-9 makes it unlawful to kill or "sacrifice" an animal "intending to use such animal for food." *Id.* at A53. Paragraph 3 permits the licensed slaughter of animals "specifically raised for food purposes." *Id.* So killings "specifically" for food are exempt under Paragraph 3, and killings not for food are exempt under Paragraph 1. But Paragraph 2 forbids killing or sacrifice "for any type of ritual," "whether or not" the animal is later consumed as food. *Id.* When the smoke clears, the references to food are irrelevant, and only ritual sacrifice is forbidden.

c. Ord. 87-40. Ord. 87-40 enacts Fla. Stat. Ann. ch. 828 as a city ordinance. App. A52. § 828.12(1) (Supp. 1991) makes it a misdemeanor to "*unnecessarily*" kill an animal. App. A56. The City contends that religious sacrifice of animals is unnecessary, and therefore unlawful. The City obtained an opinion of the Florida Attorney General to this effect.

[7] Petitioners do not object to neutral prohibitions on torment, torture, or mutilation. *See* Fla. Stat. Ann. § 828.12 (Supp. 1991), incorporated in Ord. 87-40.

Fla. Atty. Gen'l Opinion 87-56 (1987). But of course neither Hialeah nor the Attorney General has power to decide that religious worship is unnecessary, or to render theological judgment on what rituals are necessary to worship. Neither can take sides "in controversies over religious authority or dogma." *Smith*, 110 S. Ct. at 1599.

d. Ord. 87-72. § 1 of Ord. 87-72 defines "slaughter" to mean "the killing of animals for food." App. A54. § 3 forbids "slaughter" except in places zoned as a slaughter house. *Id.* § 6 exempts small producers of hogs and cattle. *Id.*

Given the City's distinction between "sacrifice" and "slaughter," this Ordinance appears inapplicable to petitioners. Indeed, if petitioners are engaged in "slaughter," all these ordinances are pre-empted by Florida statutes. The City's response to the pre-emption claim below was that petitioners are not engaged in slaughter. Br. of Appellee in Ct. App. 46-47.

The City's attempt to apply Ord. 87-72 depends on the opposite contention. By focusing on the secondary fact that many of the sacrificed animals are subsequently eaten, the City misclassifies the petitioners' church as a slaughterhouse. This misclassification enables the City to exclude petitioners' church, because no land in the city is zoned for slaughterhouses. App. A33 n.46.

As a deputy city attorney testified, the petitioners' church is not a slaughterhouse. R15-1345. It is not in the business of selling food in the open market, and the numbers of animals sacrificed are a tiny fraction of the numbers killed in a slaughterhouse. § 6 recognizes that even small commercial operations are not slaughterhouses and do not require the same regulation as slaughterhouses. But it exempts only the small scale slaughter of cattle and hogs. App. A54. It does not exempt petitioners' goats and chickens.

It is not neutral to apply slaughterhouse rules to petitioners' sacrifices unless the City applies slaughter-

house rules to all the other killings of animals in the City. The City cannot avoid all scrutiny of its justifications by arbitrarily equating any killing of an animal for food with the operation of a slaughterhouse.

Employment Division v. Smith leaves precious little protection for the free exercise of religion. If this Court permits even that protection to be evaded by clever drafting and a mere pretense of neutrality, then it has indeed repealed the Free Exercise Clause. This Court has long recognized that legislatures and city councils could readily suppress unpopular groups unless courts scrutinize legislative motive and legislative gerrymanders. *Cf. Davis v. Bandemer*, 478 U.S. 109 (1986) (political gerrymandering); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (racial gerrymandering); *Guinn v. Oklahoma*, 238 U.S. 347 (1915) (grandfather clause); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (discriminatory enforcement). If ordinances like these from Hialeah are allowed to stand, it will be open season on unpopular religions.

II. The Zoning Rationale Below Conflicts With a Free Exercise Decision of the Fifth Circuit and With Free Speech Decisions of This Court.

At one point, the courts below characterized the ordinances as mere zoning laws. App. A32-A34. That characterization is erroneous, for reasons to be explained. But even if that characterization were accepted, the decision below would conflict with other decisions protecting First Amendment rights from restrictive zoning.

The Fifth Circuit has held that the zoning power may not exclude a church from all accessible locations within the city. *Islamic Center, Inc. v. City of Starkville*, 840 F.2d 293 (5th Cir. 1988). To similar effect is this Court's decision in *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981), holding that a municipality cannot use the zoning power to exclude all live entertainment

from its borders. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Id.* at 76-77, quoting *Schneider v. State*, 308 U.S. 147, 163 (1939).

These cases are not affected by *Employment Division v. Smith*. Neither Florida nor Hialeah has any neutral, generally applicable law against killing animals. In the absence of such a law, religious sacrifice of animals is a constitutionally protected activity. A constitutionally protected religious activity cannot be zoned out of the City and confined to the hinterlands.

Even if the ordinances were neutral and generally applicable, the zoning rationale would be within *Smith*'s exception for "individual" consideration. 110 S. Ct. at 1603. Zoning, with its attention to individual parcels and development plans, and its elaborate provisions for waivers, variances, and non-conforming uses, inherently involves the sort of individualized consideration in which religion must be treated equally with other favored interests.

In any event, these ordinances are not zoning laws. The zoning characterization ignores the context of these ordinances, the express purpose of preventing the exercise of petitioners' religion, and the gerrymanders to implement that purpose. The ordinances do not confine petitioners' worship to an appropriate zone; they exclude it from the City. On the other hand, the ordinances do not exclude all killing of animals from the City. Veterinarians, humane societies, pet owners, exterminators, seafood restaurants, fishers, and farmers may kill animals in the City. The zoning rationale cannot disguise the patent discrimination against religion in these ordinances.

III. Important Questions Concerning the Compelling Interest Test Were Resolved in Ways that Conflict with Decisions of this Court.

A. Defining Compelling Interest. *Employment Division v. Smith* also puts the compelling interest test in a new light. *Smith* divides laws restricting religious exercise into those that are religiously neutral and those that are not. Laws that are religiously neutral are immune from strict scrutiny. On the other hand, laws that are not religiously neutral present special problems of justification. Simply put, it is hard to imagine a compelling need to discriminate against religion. Certainly, no such compelling need is presented on this record.

The decision below also conflicts with this Court's interpretation of the compelling interest test in cases prior to *Smith*. These conflicts remain important, because the compelling interest test after *Smith* is at least as stringent as it was before *Smith*. A principal part of this Court's rationale for restricting the *scope* of the compelling interest test was to maintain its *stringency* in the narrower range of cases to which it would apply. *Smith* cautions against watering down the test: "if 'compelling interest' really means what it says (and watering it down here would subvert its rigor in other fields where it is applied), many laws will not meet the test." 110 S. Ct. at 1605.

In the courts below, the compelling interest test was watered down beyond recognition. The holding below raises three distinct subquestions about the meaning of the test.

1. Can the City rely on interests that it does not pursue in secular contexts? The compelling interest must fit the law it is alleged to justify. *Smith* surely means the City must show a compelling reason *for discriminating against religion*. The City cannot suppress religious worship in pursuit of interests that it does not

pursue in secular contexts. Rather, the City must show that the religious practice of animal sacrifice poses some special danger that is not posed by any lawful reason for killing animals, that the City's interest in suppressing this special danger is compelling, and that no less restrictive means would satisfy its interest.

The courts below did not consider the impact of *Smith* on the compelling interest test. Neither court required the City to prove a compelling interest in discriminating against religion. Rather, the City was permitted to rely on interests that it does not pursue in secular contexts.

2. Are all legitimate interests compelling? The district court reduced the requirement of a "compelling" interest to a requirement of a rational or legitimate interest. This appears most clearly in the following passage, from a part of the opinion on which the court of appeals relied:

> Equally compelling is the City's interest in the protection of animals from cruelty and unnecessary killing. "It has long been the public policy of this country to avoid unnecessary cruelty to animals." *Humane Society of Rochester v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986). The Florida Supreme Court observed more than two decades ago that "it is now generally recognized that legislation which has for its purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power." *C.E. America, Inc. v. Antinori*, 210 So.2d 443, 444 (Fla. 1968).

App. A44-A45.

This is the entire discussion of whether the City's interest in protecting animals is compelling. By treating the two cited cases as dispositive on the question whether a compelling interest was at stake, this passage assumes that any "public policy" or any "valid exercise of

the police power" satisfies the compelling interest test. And because the district court treated the interest in protecting animals as "equally compelling" with the alleged threats to health, it appears that this watering down of the compelling interest test affected the entire opinion. The district court's approach "relegates a serious First Amendment value to the barest level of minimal scrutiny that the Equal Protection Clause already provides" in cases not subject to strict scrutiny. *Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 141-42 (1987).

It is not every or even most legitimate government interests that are compelling. "Compelling" does not merely mean a "reasonable means of promoting a legitimate public interest." *Id.* at 141. Compelling does not merely mean "important." *Thomas v. Review Board*, 450 U.S. 707, 719 (1981). Rather, "compelling interests" include only those few interests "of the highest order," *Smith*, 110 S. Ct. at 1605; *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972), or in a similar formulation, "[o]nly the gravest abuses, endangering paramount interests," *Sherbert v. Verner*, 374 U.S. 398, 406 (1963), quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945). This Court explains "compelling" with superlatives: "paramount," "gravest," and "highest order." Petitioners believe that these words mean what they say. The courts below did not.

Even these interests are sufficient only if they are "not otherwise served," *Yoder*, 406 U.S. at 215, if "no alternative forms of regulation would combat such abuses," *Sherbert*, 374 U.S. at 407, and if the challenged law is "the least restrictive means of achieving" the compelling interest, *Thomas*, 450 U.S. at 718.

The stringency of the compelling interest test appears most clearly in *Wisconsin v. Yoder*, invalidating Wisconsin's compulsory education laws as applied to Amish children. 406 U.S. at 219-29. The education of children is important, and the first two years of high

school are basic to that interest. But the state's interest in the first two years of high school was not sufficiently compelling to justify a serious burden on free exercise. *Smith* reaffirmed *Yoder*. 110 S. Ct. at 1601.

The unemployment compensation cases also illustrate the point. The government's interest in saving money is legitimate. But it is not sufficiently compelling to justify refusing compensation to those whose religious faith disqualified them from employment. *Sherbert v. Verner*, 374 U.S. 398, 406-09 (1963), reaffirmed in *Smith*, 110 S. Ct. at 1603. The City must show something more compelling than saving money, more compelling than educating Amish children.

This Court has found a compelling interest in only three free exercise cases. In each, strong reasons of self-interest or prejudice threatened unmanageable numbers of false claims to exemption, *and* the laws at issue were essential to national survival or to express constitutional norms: national defense, *Gillette v. United States*, 401 U.S. 437 (1971), collection of revenue, *United States v. Lee*, 455 U.S. 252 (1982), and racial equality in education, *Bob Jones University v. United States*, 461 U.S. 574 (1983). The Court feared that "the tax system could not function" if every taxpayer could object to expenditures that allegedly violated his religious beliefs. *United States v. Lee*, 455 U.S. 252, 260 (1982).

The stringency of the compelling interest test makes sense in light of its origins: it is a judicially implied exception to the constitutional text. See Douglas Laycock, Book Review, 99 Yale L.J. 1711, 1744-45 (1990). The Constitution does not say that government may prohibit free exercise for compelling reasons. Rather, the Constitution says absolutely that there shall be "no law" prohibiting free exercise. The implied exception is based on necessity, and its rationale runs no further than cases of clear necessity. If the City can overcome a constitutional right by invoking any legitimate public policy, or any valid exercise of the police

power, constitutional rights are reduced to mere exhortations. What the City has shown falls far short of a compelling interest.

3. Must the City prove actual harms, or must worshipers disprove all possible risks? Under this Court's precedents, the City must prove that serious harms are actually occurring as a result of petitioners' worship services. It cannot rely on speculation about what might happen, or on theoretical risks unconfirmed by experience. Mere "fear or apprehension" cannot be enough, because government can always show fear and apprehension; "any departure from absolute regimentation may cause trouble." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969). "[O]ur Constitution says we must take this risk." *Id.*

Defending its compulsory education law in *Yoder*, Wisconsin relied on the plausible fear that some Amish children would "choose to leave the Amish community" and that they would "be ill-equipped for life." 406 U.S. at 224. This Court rejected that fear as "highly speculative," demanding "specific evidence" that Amish adherents were leaving and that they were "doomed to become burdens on society." *Id.* at 224, 225. Similarly, various states have feared that a combination of false claims and honest adoption of religious objections to work would dilute unemployment compensation funds, hinder the scheduling of weekend work, increase unemployment, and encourage employers to make intrusive inquiries into the religious beliefs of job applicants. Some of these fears were plausible; some were not. But this Court rejected them all for lack of evidence that they were really happening. *Frazee v. Illinois Dept. of Employment Security*, 109 S. Ct. 1514, 1518 (1989); *Thomas v. Review Board*, 450 U.S. 707, 718-19 (1981); *Sherbert v. Verner*, 374 U.S. 398, 407 (1963).

The district court turned this evidentiary requirement on its head, repeatedly requiring the Church to prove that no animal sacrifice would ever cause harm. *See*

App. A13 ("there is no guarantee" that all arteries will be cut simultaneously); *id.* at A43 ("a risk of physical harm"); *id.* at 45 ("Plaintiffs have not shown" that regulating care of animals and disposal of carcasses would satisfy the City's concerns); *id.* at A46 n.59 ("Pichardo could give this Court no assurance" that deviant practitioners would obey regulations). Religious worshipers are not required to prove that there is no risk; instead the City is required to prove that serious harms are actually happening.

B. Applying the Compelling Interest Test. These questions about the City's burden of justification and the meaning of the compelling interest test are of general importance to all cases in which government tries to justify restrictions on constitutional rights. But these important questions are best answered in the context of particular facts. This Court can define "compelling interest" with synonyms and abstract explanations, but it can effectively convey its meaning only by holding that particular facts do or do not justify discriminatory regulation of religion. With complex legal concepts like compelling interest, the "outer limits will be marked out through case-by-case adjudication." *St. Amant v. Thompson*, 390 U.S. 727, 730 (1968).

The record in this case squarely presents these questions about the City's burden of justification. The courts below reached legal conclusions of compelling interest on the basis of expert testimony to specific facts. The issue presented to this Court is whether these specific facts justify discriminatory restrictions on religion. That is a legal question on which this Court has the final word.

To answer that legal question, this Court must "make an independent examination of the whole record." *Bose Corp. v. Consumers' Union, Inc.*, 466 U.S. 485, 499 (1984), quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-86 (1964). This independent examination of the record is for a limited and defined purpose. The district

court accepted the testimony of the City's experts, and petitioners do not ask this Court to reconsider that determination. But the district court's findings must be read in light of the specific facts to which those experts testified. This Court must examine the concrete facts to which the experts testified, and separate those facts from conclusions that depend on judgments of law, policy, or degree.

Petitioners contend that when this separation is made, the evidence simply will not support a legal conclusion of compelling interest in discriminatory suppression of animal sacrifice. Most of the City's broad claims of government interest are speculative and unproven, and none of them is sufficiently important to be compelling. In analogous secular contexts, the City either does not pursue these interests at all, or it pursues them to a lesser degree and by less restrictive means.

1. The alleged threat to public health. The trial judge found a threat to public health, because some unidentified practitioners of animal sacrifice sometimes improperly dispose of carcasses in public places. App. A43. Dead animals harbor germs, and the germs can be spread by other animals that come to feed on the carcass. But the judge found that "[t]here have been *no* instances documented of any infectious disease originating from the remains of animals being left in public places." *Id.* at A18 (emphasis added).

The district court's finding of increased risk was based on the testimony of Mr. Walter R. Livingstone, environmental administrator for the Dade County Department of Public Health. But he testified that the problem comes from many sources, including restaurants, public buildings, veterinarian's offices, and ordinary garbage. R11-556, 566, 590. Indeed, he denied that animal sacrifice presents any special problem: "I don't believe what we're talking about here today has anything to do with animal sacrifice." R11-592. "As I said

before, you are trying to change this into animal sacrifice, and I haven't been speaking of animal sacrifice at all." R11-594. Similarly, Ms. Zorida Diaz Albertini, Director of Animal Services for Dade County, testified about dead animals in the public right of way. Her testimony indicated that most such animals are dogs, cats, and other species that are not sacrificed. R10-452.

Thus, the problem of improperly discarded sacrificial animals appears to be a rather small part of the problem of dead animals, which in turn is a very small part of the problem of organic garbage. The City has not banned all ownership of cats and dogs to keep a few of them from being hit by cars, but it has banned all sacrifice of animals to keep a few of them from being improperly discarded.

The City can address the problem of improper disposal directly, by requiring proper disposal and by prosecuting violators. It is not difficult to properly dispose of a sacrificed animal. Mr. Livingstone testified that it is safe to put the carcass in a plastic bag and to put the plastic bag in a garbage can. R11-555. It would be especially easy to detect improper disposals from a fixed and public place of worship, such as that proposed by petitioners.

2. The alleged threat to private health. The courts below also found a threat to private health. Many of the sacrificed animals are eaten, and the meat is not inspected by any public authority. But there was no evidence that any person has ever become ill from eating a sacrificed animal.

Once again, the City relies on an interest that it pursues only with respect to religious sacrifice. Hunters eat their kill, and fishers eat their catch, but neither Florida nor Hialeah requires its hunters and fishers to submit this meat for public inspection. A Florida statute requires inspection of commercially sold meat. Fla. Stat. Ann. § 585.70 et seq. (1991 Supp.). But the statute has

several express exemptions, including slaughter of animals raised at home for the use of the owner and "members of his household and nonpaying guests and employees." § 585.88(1)(a).

Thus, the relevant public policy is that the owner of an animal can kill it for non-commercial food consumption, and that any risk from this activity is too small to justify government regulation. The interest in eliminating this small risk does not suddenly become compelling when the animal is sacrificed as part of a worship service.

3. The harm to animals. The district court held that the City has a compelling interest in protecting animals from "cruelty and unnecessary killing." App. A44. The holding that animals are unnecessarily killed depends on the impermissible conclusion that religious worship is unnecessary. See *supra* at 13-14.

The trial judge found a compelling interest in preventing three kinds of cruelty. Two of these are obviously discriminatory. He found that the animals experience fear prior to sacrifice, and that some suppliers of animals inadequately feed and house them. App. A17-A18, A45. But no level of government attempts to prevent these problems in secular contexts, so they cannot be compelling reasons for preventing religious worship. One of the City's experts testified that animals would experience similar fear in a commercial slaughterhouse or any other strange place. R12-911. Another testified that no level of government regulates the care of farm animals. R13-1014, 1016. In any event, the commercial suppliers of sacrificial animals can be regulated directly. Abuses there are not a reason to suppress petitioners' worship.

We come then to the essence of the alleged cruelty issue. The animals are sacrificed by cutting the carotid arteries with a single knife stroke. App. A12. Cutting the carotid arteries is approved as humane by Florida

and federal statutes on Kosher slaughterhouses. Fla. Stat. Ann. § 828.23(7)(b) (1976); 7 U.S.C. § 1902(b) (1988). The other approved method, used in non-Kosher slaughterhouses, is to render the animal unconscious before slaughter. 7 U.S.C. § 1902(a) (1988).

Based on the testimony of the City's expert, Dr. Fox, the trial court found that "there is no guarantee" that the priest can cut all the arteries at the same time, that some animals have third and fourth carotid arteries, and that sometimes, the arteries close themselves off, thus delaying death. App. A13. Dr. Fox testified that if all the arteries were severed simultaneously, the animal would become unconscious "very rapidly." R12-891. But if fewer than all the arteries were severed, the animal would become unconscious "slowly," over a period of "many seconds to minutes." *Id.*

The City's alleged compelling interest is to protect animals from this brief period of consciousness in those cases in which the priest fails to sever all arteries simultaneously and does not realize that he has failed. Dr. Fox did not estimate, and the trial judge did not find, how often such errors would occur. This risk of brief harm to animals is simply insufficient to justify suppression of a constitutionally protected human worship service.

Dr. Fox's specific testimony reveals the standards on which he based his conclusion that sacrifice is inhumane. Under Dr. Fox's standards, a method of sacrifice is unacceptable if it takes "seconds to minutes" when something goes wrong, and if no one can guarantee that nothing will ever go wrong. If applied generally, these standards would shut down Kosher slaughterhouses as well as Santeria worship services. Dr. Fox thought the Jewish and Muslim knife stroke from the front of the throat is somewhat more reliable than the Santeria knife stroke, which goes from one side through to the other. R12-887. But he testified that animals killed in Kosher slaughterhouses often fail to die immediately, R12-881,

and he supports more restrictive regulation of Kosher slaughterhouses. R12-902, 917.

No legislature has applied Dr. Fox's standards to Kosher slaughterhouses, but the district court relied on Dr. Fox's standards to uphold suppression of Santeria. Indeed, the district court held that Kosher slaughter is exempt even from Hialeah's ordinances, because Kosher slaughter is for the primary purpose of food consumption and only secondarily for religion. App. A31. Such discrimination between religions violates the Establishment Clause, *Larson v. Valente*, 456 U.S. 228 (1982), as well as the free exercise rights of Santeria. And such discrimination between faiths wholly undermines the City's claim that its interest is compelling.

In secular contexts, state and local policy permits practices that inflict much greater and longer lasting pain on animals. The humane slaughter rules do not apply at all to any person slaughtering and selling "not more than 20 head of cattle nor more than 35 head of hogs per week." Fla. Stat. Ann. § 828.24(3) (Supp. 1991) (App. A57), incorporated in Ord. 87-40. Neither state nor local law requires exterminators to use the most humane methods of killing animals. It is permissible to inflict "pain and suffering" on animals "in the interest of medical science." *Id.* § 828.02 (1976), incorporated in Ord. 87-40.

State and local policy on hunting, fishing, and trapping shows little concern for the suffering inflicted on animals. Using one animal to hunt another is expressly exempted from the animal cruelty statutes. *Id.* §§ 828.122(6)(b), (6)(e) (Supp. 1991), incorporated in Ord. 87-40. Trapping is legal in Florida. *Id.* §§ 372.57(2)(i), (2)(j), (3). Florida has hunting seasons in which modern firearms are forbidden but muzzle-loading guns are permitted, *id.* § 372.57(5)(c), and seasons in which firearms are forbidden but archery is permitted, *id.* § 372.57(5)(d). These weapons are less likely to achieve a clean kill; animals may suffer permanent

injury, festering wounds, or slow death. Dr. Fox was opposed to archery hunting. R12 at 912-13. But Florida actively encourages these risks, and residents of Hialeah may participate.

In short, Florida and Hialeah permit humans to inflict much greater suffering on animals for a wide variety of secular reasons. Once again, the allegedly compelling policy is applied only to religion.

4. The interest in zoning. Finally, the district court said that "the City has a compelling interest in prohibiting the slaughter or sacrifice of animals within areas of the City not zoned for slaughterhouse use." App. A45. Neither court explained this holding, and neither court made any findings to support it.

There is no finding and no evidence that religious sacrifice of animals present the same problems as slaughterhouses. Indeed, the City's evidence is to the contrary. A Deputy City Attorney testified that a church sacrificing animals is not a slaughterhouse. R15-1345. The City persuaded the trial court that Santeria's secrecy makes regulations unenforceable. App. A46 n.59. A practice that is difficult to detect even when you search for it is not a compelling zoning problem.

The pattern is the same with respect to all the alleged compelling interests If the Court will examine the specific facts to which the City's experts testified, no compelling interest is shown. If the Court accepts the experts' conclusory labels, like "increased risk" or "inhumane," the effective power to decide the controlling question of law is transferred from the courts to the expert witnesses. Only courts can decide whether the specific facts in evidence show a compelling interest sufficient to justify suppression of the central religious ritual of an ancient but unpopular minority faith.

CONCLUSION

Hialeah has not made it a crime to kill animals. Rather, Hialeah has made it a crime to sacrifice animals to your God. This Court should grant certiorari to consider the important constitutional questions raised by this extraordinary prohibition.

Respectfully submitted,

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DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-5176

D.C. Docket No. 87-1795-CIV-EPS

CHURCH OF THE LUKUMI BABALU AYE, INC., a non-profit corporation and ERNESTO PICHARDO,

Plaintiffs-Appellants,

versus

CITY OF HIALEAH,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

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(June 11, 1991)

Before FAY and COX, Circuit Judges, and HENDERSON, Senior Circuit Judge.

PER CURIAM:

The district court made extensive findings of fact, see Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 723 F. Supp. 1467 (S.D. Fla. 1989), and no party argues that the record does not support these findings. In light of these findings, the district court properly concluded that the ordinances passed by the City of Hialeah are consistent with both state statutes and the United States Constitution for the reasons set forth in Parts A, B, C(1) and C(3) of the "Conclusions of Law" in the district court's memorandum opinion dated October 5, 1989.[1] For this reason we need not consider the district court's reasoning contained in Part C(2) of the "Conclusions of Law" of the court's opinion. We thus affirm the judgment of the district court.

AFFIRMED.

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[1] Although the district court employed an arguably stricter standard in analyzing whether the ordinances violate the United States Constitution than the Supreme Court did in Employment Div., Dep't of Human Resources v. Smith, ___ U.S. ___, 110 S.Ct 1595 (1990) (which was decided after the district court issued its memorandum opinion and order), we need not decide the effect of Smith in this case.

[723 F. Supp. 1467]

CHURCH OF THE LUKUMI BABALU AYE, INC., and Ernesto Pichardo, Plaintiffs,

v.

CITY OF HIALEAH, Defendant.

No. 87-1795-CIV-EPS.

United States District Court,
S.D. Florida,
Miami Division.

Oct. 5, 1989.

[1469]
MEMORANDUM OPINION

SPELLMAN, District Judge.

FINAL JUDGMENT AND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS CAUSE was tried before the Court without a jury on July 31, and August 2, 3, 7, 8, 9, 11, 14, and 15, 1989. Plaintiffs brought this lawsuit pursuant to 42 U.S.C. § 1983 to enjoin, declare unconstitutional, and recover damages for the alleged deprivation of Plaintiffs' constitutional rights, under the First, Fourth and Fourteenth Amendments, by the CITY OF HIALEAH. Plaintiffs claim that Defendant's passage of certain ordinances and resolutions, and Defendants' alleged "process of discouragement, harassment, threats, punishment, detention, and threats of prosecution" violate Plaintiff's constitutional rights. The Church specifically is seeking the right of the Church to perform animal sacrifices on Church premises, and for the right of

Church members to perform sacrifices in their own homes.

This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which provides for original jurisdiction of all civil actions arising under the Constitution and laws of the United States, and 28 U.S.C. § 1343, which provides for jurisdiction of actions brought pursuant to 42 U.S.C. § 1983. Upon careful consideration of the record, the exhibits, and the memorandum filed by the parties, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff, CHURCH OF THE LUKUMI BABALU AYE, INC. ("the Church"), is a not-for-profit corporation organized under the laws of the State of Florida in 1973.[1] Plaintiff, ERNESTO PICHARDO ("Pichardo"), is President of the Church and holds the religious rank of "Italero." Defendant, CITY OF HIALEAH ("the City"), is a municipal corporation situated in the State of Florida.

A. Background

The Church promotes the Lukumi religion, generically referred to as Yoba or Yoruba, and commonly referred to as Santeria. Yoba or Yoruba is an ancient

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[1] Although this Church was incorporated in 1973, the only information this Court has regarding the Church is from Pichardo's testimony. From that testimony, it appears that the Church's activities began at the time that the events leading up to this lawsuit were initiated; i.e., at the time that the Church first leased the property in Hialeah and attempted to obtain their licenses. This Court has no information regarding any Church activities before that time.

religion that originated almost 4000 years ago with the Bantu people--the proto-group of the Yoruba people of West Africa, who live mainly in Southern Nigeria. Yoruba is one of the three indigenous religions of the Yoruba people and is practiced openly in Nigeria today.

During the 16th, 17th and 18th centuries, great numbers of Yoba practitioners were enslaved and brought to the eastern region of Cuba,[2] where the practice of their native religion was forbidden. Slaves were expected to become Christians,[3] and practitioners of Yoba were persecuted by the authorities and discriminated against by the populace.

The slaves, to escape the severe penalties and social stigma, began to express the Yoba faith through the use of Catholic [1470] saints and symbolism.[4] This syncretism[5] permitted slaves to practice Yoba, or Santeria, while appearing to practice Catholicism.

Thus, for 400 years, Santeria was an underground religion practiced mostly by slaves and the descendants

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[2] This area was at one time called Oriente Province. It is now split up into two provinces.

[3] One of the justifications for slavery often used by the Spanish government was that they were not really engaging in slavery per se, but that they were really engaged in the business of saving souls. Thus, before slaves were loaded onto slave ships, they were often baptized. The slave ships themselves were often given names like "Jesus" and "Estella" (Hope).

[4] For example, because Saint Peter was associated with iron, the keys to heaven, Yoba practitioners saw Saint Peter as Shango, the god of lightening and thunder.

[5] Syncretism is a term which refers to the blending of two cultures.

of slaves. Eventually it spilled over from the black population to the white population. However, Santeria was seen as backward, as the religion of slaves and remained underground, first from fear of persecution, and later, from fear of discrimination and social stigma.

Santeria first came to the United States with the Cuban exiles who fled the Castro regime in the late 1950's and early 1960's. Other Afro-Caribbean religions, like Voodoo, Macumba, and Palo Mayombe, arose from the same circumstances in other Caribbean islands, and also exist in South Florida, brought here by natives of those islands.[6] In total, there are approximately 50,000 to 60,000 practitioners of Santeria in South Florida today, and an untold number of people who practice animal sacrifice.

Santeria remains an underground religion and the practice was not, and is not today, socially accepted by the majority of the Cuban population. Additionally, Santeria has lost some contact with its own past in Cuba. Most religious activity takes place in individual homes by extended family groups. There is little or no intermingling of the groups, and few practitioners know others outside their own group that practice Santeria. Santeria has remained underground because most practitioners fear that they will be discriminated against. The religion has taken on a private, personal tone that

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[6] It is often very difficult for an outsider to tell from religious relics which Afro-Caribbean religion is being practiced. That is one of the problems in identifying the source of the animal carcasses that are left in public. It is hard to tell if they have been left by practitioners of another Afro-Caribbean religion or by practitioners of Santeria whose methods and interpretations differ from what Pichardo believes are the true and universal tenants [sic] of Santeria.

is very different than the way that it is practiced in Nigeria. Although Pichardo feels that the religion would become more open if the Church was allowed to practice its rituals openly, Dr. Lisandro Perez, a sociologist, testified that in his opinion, the outcome of this case would not necessarily affect the degree of which Santeria was practiced in private.[7]

Pichardo testified that although he holds the priesthood rank of "Italero," he can not estimate the number of practitioners in the City of Hialeah, nor does he know how many of the members of his Church are priests, or hold any particular rank in the priesthood.[8] Additionally, although Pichardo claims that there are about ten Italeros in Dade County, he has only met two. There is an annual conference of Santeria priests held in New York, but Pichardo testified that he has never been invited to one, nor attended one.

Santeria has an interrelationship of beliefs with conduct of life, i.e., holidays, sabbath, days of worship. There are ceremonies for life cycle events such as child birth, marriage and death rites. Beliefs and practices have remained fairly constant over time, but are based on the interpretation of an oral tradition. There is no organized worship, with a centralized authority, and, with the exception of written tenets prepared by Pichardo

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[7] Dr. Perez stated that "[t]here may be a lot of Santeros who may not wish to place their beliefs on a public sort of marketplace."

[8] The rank of "Italero" is the second highest rank in Santeria although there are different levels of knowledge within that rank. The rank above Italero is "Babalawo." Pichardo testified that he did not know if any member of his Church held the rank of "Babalawo."

(possibly in preparation of this lawsuit), no written code or tradition appears to exist.[9]

[1471] Pichardo testifies that priests are trained as apprentices by other priests, guided by the oral traditions. Different priests perform different functions, such as divination, and sacrifice, and a priest must train in each different discipline he wishes to pursue. There is, however, no central authority which establishes, or verifies, a priest's training or credentials.[10]

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[9] Pichardo prepared a "Code of Beliefs" and "Code of Ethics" that he believes correctly sets forth the oral traditions (as taught to him) which in turn reflect the universal principles of the religion. This document is intended by Pichardo to take the oral tradition and turn it into a written tradition. Pichardo testified that this **[1471]** document had gone through the process of being analyzed by a group of elder priests; however, Pichardo gave no evidence to support this claim, and in fact has consistently testified that he doesn't even know which members of the Church are priests.

[10] Pichardo testified that it is very difficult to tell who was a practitioner or priest in the Santeria religion. He stated that "[Santeria] does not have this center where people can go and you can monitor and you have a number of set controls over that religious community." Pichardo went on to testify that the Church did establish its own internal identification techniques during the Mariel boatlift because there were a number of refugees that claimed to be priests of the faith:

> [T]here were some loose ends out there that were in fact posing to be priests of the faith and were actually doing Santeria or what appeared to be Santeria ceremonies and ripping people literally off, and then they would take several thousand dollars from someone and take off, take off from Miami, and we had no religious

B. Animal Sacrifice

Animals, including chickens, pigeons, doves, ducks, guinea fowl, goats, sheep, and turtles, are sacrificed as an integral part of the rituals and ceremonies conducted by practitioners of Santeria. According to Pichardo, most, but not all, of the animals are consumed as food after they are sacrificed.[11] A priest that performs sacrifice is taught as an apprentice through observation of sacrifices. Only priests trained in this manner are supposed to conduct animal sacrifice. Those priests are not involved in obtaining, maintaining, butchering, cooking or disposing of the sacrificial animals.[12] Pichardo, even as a high priest, is unaware of how those other functions were actually performed, although he did state that the animals were expected to be healthy, clean and free of disease. The priests receive no training in

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> or even legal means to be able to make use of or control those situations, so we did the best we could.

[11] Animals used in healing rites are almost never consumed.

[12] According to Pichardo, the preparation for the animal sacrifice requires that there be several priests, all with different functions. For example, there are those who clean-up after the sacrifice; a person who actually handles the animal--inspects the animal to see that it is healthy and clean and then brings that animal to the place where it is to be sacrificed; a priest and his apprentice who actually kill the animal; a person who removes the carcass; a butcher or butchers; a person who takes the butchered animal to be cooked; a cook or cooks. Each function is kept separate from the other and no one else really knows how each person performs his or her function.

establishing that an animal is disease-free, but rely on personal observation. Pichardo himself has never been involved in the disposal of animal carcass and has no knowledge of what is actually done with the remains of sacrificed animals, whether or not any part of the animal is consumed.[13]

There appears to be no prohibition in the Santeria religion against animal burial, animal incineration, or animal disposal in sanitary waste containers or animal disposal in any form. Pichardo testified that the Church would have no problem in complying with legal requirements in those areas; but there was no way in which other practitioners, outside the Church itself, could be monitored or controlled; and no legal requirements to which this Court could address itself.[14]

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[13] Pichardo speculated that the remains of sacrificed animals were probably placed in the garbage of the private homes. Pichardo further testified that he has no idea of the average number of animal sacrifice performed each week in the City of Hialeah by priests of the Yoba faith.

[14] In the Yoba religion, divination is based on the *ifa* divination cycle. *Ifa* is made up of 256 *odus* or principles. Each *odu* is further subdivided in groups of 16. Divination through *ifa* is usually performed by the casting of shells or stones. The pattern is then read and interpreted as communication from the various deities.

Through divination, *ifa* mandates the type of animal to be sacrificed and the use to which the sacrifice should be put. It is the individual priests, however, who interpret, or misinterpret, the basic principles of *ifa*. Pichardo interprets [1472] the religious principles of Santeria as requiring that a practitioner obey the law; i.e., if the law says that dead animals cannot be disposed of in public roadways, a practitioner could not dispose of the carcass in such a way and still be in compliance

[1472] Pichardo testified that the actual killing of the animal is taught by oral apprenticeship. The apprentice, by observing an experienced priest, sees where and how the knife should be inserted. Ultimately, the apprentice priest becomes certain that he can adequately perform the sacrifice and do the actual killings assisted by the teacher.[15] After the teacher is satisfied that the student has the ability to perform the sacrifice, the student is allowed to kill the animal without assistance. A student may be taught by more than one priest.

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with religious principles. However, a priest could interpret *ifa* to require that an animal carcass be left in the open, or even neglect to consult the *ifa* at all regarding the disposal. Pichardo testified that he had a strong feeling that lesser nonhierarchy priests do misinterpret the divination process and could in fact order the disposal of animal remains in public places. Pichardo claims that such a priest would be a deviant, but admits that such a priest could interpret *ifa* in that way.

Pichardo speculated that his Church would be able to stop what he considered to be deviant practices, but gave no indication on how this would be accomplished, beyond just opposing such practices. Pichardo speculates that if the Church is allowed to practice its rituals openly, it will "absorb the thousands that are out there in South Florida and have them come in and not hide behind doors because of fear of persecution and discrimination and what have you." However, Pichardo admits that while he estimates 50,000--60,000 Santeria practitioners in South Florida, he has no idea how many are located in Hialeah, or how many would actually come forward and join the Church.

[15] The teacher and the student both hold onto the knife and the teacher guides the student through the killing stroke a number of times.

According to Pichardo, an animal that is to be sacrificed is placed on a table on its left side. The apprentice holds the legs and the priest that will perform the sacrifice stands on the other side of the animal and holds the animal's head, with the head facing away from the priest.[16] The animal's head extends beyond the edge of the table and is held high on the nose area by the priest's left hand. The knife is held in the priest's right hand (even if the priest happens to be left-handed).

Pichardo testified that the animal is killed within a matter of moments after being placed on the table. The priest punctures the neck of the animal with a knife[17] right into the main arteries in one movement. The knife is inserted into the right-hand side of the animal's neck and is pushed all the way through the animal's neck. The knife does not actually cut the throat of the animal, but instead goes directly into the vein area, just behind the throat, and in front of the vertebrae. This hopefully would sever both of the main arteries of the animal.

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[16] The priest is standing in a position so that the back of the animal on the table is basically against the front of the priest.

[17] The knife is usually approximately 4 inches long.

There was expert testimony[18] that established that this method of killing is not humane because there is no guarantee that a person performing a sacrifice in the manner described can cut through both carotid arteries at the same time. Additionally, some of the lining of the artery can recoil and close the artery to prevent the instant hemorrhaging, in a tourniquet effect. Dr. Fox concluded, and this Court finds, that the method used by the priest is not a reliable or painless method of severing both carotid arteries.

Dr. Fox also testified, and this Court finds, that with young goats or sheep, there are deeper arteries within the vertebrae so that these animals would not likely be unconscious instantaneously. Only a complete neck severance can make it clear that the arteries have all been severed and a stabbing or poking is not accep- **[1473]** ted from either a traditional standpoint or a humane standpoint.

A chicken is even more problematic because of the fact that poultry have both internal and external carotid arteries. In other words, there are four carotid arteries that must be severed. Those arteries are rubbery and slide, and this increases the possibility of one of the arteries being missed.

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[18] The expert witness, Dr. Michael Fox, is the vice-president of the Humane Society of the United States and directs the Center for Respect for Life and Environment in Washington, D.C. Dr. Fox has a degree in veterinarian medicine from the Royal Veterinary College in London. He also has a Ph.D. in medicine from London University and a Doctor of Science in Animal Behavior Ethology. Dr. Fox has written approximately thirty books, including books on farm animals and caring for poultry, sheep and other livestock.

The animal being killed is likely to experience both pain and fear. First, the animals are often kept in close confinement and with animals other than its own species while awaiting sacrifice. This causes great stress and anxiety to the animal. Second, an animal led into a room where other animals had just been killed would perceive the body secretions of the animals that had been killed. Animals that experience fear often secrete chemical metabolites know as thermones, and the odor of these thermones can trigger an intense fear reaction in other animals that detect those odors.[19]

The stress and fear experienced by chickens is particularly dangerous because the chickens' immune systems become affected and this leads to the increased growth of bacteria, salmonella especially, in those chickens' systems. Salmonella is very harmful to humans and a visual inspection of a chicken would not reveal that it had this disease.

Although an expert pathologist, Dr. Wetli, testified for Plaintiffs that the death of the animal, as described, would be very rapid,[20] Dr. Wetli is not a veterinarian and has no knowledge of any biological differences that might impact on his evaluation. Dr. Wetli testified that even though the animal might experience pain, but that the animal's interpretation of the pain might not be the

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[19] Animals may not always appear to be experiencing fear because of a condition known as "tonic immobility" where an animal in intense fear simply freezes, or becomes immobile. Those animals, however, are experiencing both fear and pain. Dr. Fox testified, and this Court finds, that the chance of an animal under these circumstances not defecating or urinating could only occur if the animal was deprived of food and water for a period of time prior to the sacrifice.

[20] Dr. Wetli defined rapid as being "within less than a minute."

same as a human's. The Court finds that the testimony of Dr. Fox, with his specialized knowledge, is more credible in this area and, accepts Dr. Fox's conclusions that the method used in sacrificing the animals is not humane, but in fact causes great fear and pain to the animal.

According to Pichardo, after the animal is killed, the animal's blood is drained into clay pots placed underneath the animal's head. The animal is then decapitated and removed from the area. The pots of blood are placed before the deities until the animal's carcass is removed.[21] Then, according to the way Pichardo was taught, the blood is also removed and disposed of; but how it is disposed of remains a mystery.

Pichardo testified that in the initiation rite, which lasts for eight days, the sacrifices all occur on the second day, one after another.[22] The initiate and the priests are

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[21] The number of animals sacrificed and the number of pots of blood collected depend on the number of deities involved in that ceremony. There was some credible testimony that the blood is at times actually drunk, placed on individuals, or left in the pots for long periods, although Pichardo testified that he would find these to be deviant practices. One witness testified that his parents had practiced Santeria and, as a child, he had been offered blood to drink, but had refused.

[22] Pichardo estimated up to 600 initiations per year are performed in private homes in Dade County. Pichardo admitted that the constant traffic in and out of the house during the eight day initiation rites could disturb the neighbors, as well as the butchering of the animals if the neighbors could observe it. Additionally, Pichardo testified that between 20 and 30 animals are usually sacrificed during an initiation rite. That means that between 12,000 and 18,000 animals are sacrificed in

in a "sacred" room. Only those with a specific function are allowed in the sacred room. The initiate is confined to one corner of the room and must stay in that corner of the room for the entire eight days.[23] The usual age of an initiate is [1474] 30-35 years old, but children as young as seven years have been initiated.[24]

The sacrificial animals are brought into the room and led over to the initiate for the initiate to touch. In an initiation ceremony there are between 6 and 13 deities and anywhere from 24 to 56 four-legged animals and fowl are sacrificed.[25]

The animals are butchered, cooked and eaten during the eight day initiation period. The butchering is usually done outside. This Court finds it incredible that so many animals can be properly butchered and cooked in one home in a matter of hours; it is much more likely that this process takes most, if not all, of the remaining seven days.

In the faith healing rites, usually only one animal is sacrificed. The illness is considered to have then passed to the animal. The animal is not eaten, but is either placed on the altar of the deity for several hours, or is

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initiation rites alone, during a one year period.

[23] The initiate can leave the room, under guard, only to use the bathroom facilities.

[24] Young children are usually only initiated if it is considered a crisis situation, i.e., if the child has some type of illness. Pichardo himself was initiated at age 16. Additionally, children of all ages are permitted to witness the public sacrifices during the annual ceremonies, as long as the parents are present.

[25] A usual initiation would involve the sacrifice of six four-legged animals and twenty-four chickens.

disposed of entirely.[26] There was no testimony as to how the animal carcass is ultimately disposed of.[27]

A priest can obtain animals from many different sources. Usually a priest works mostly with one botanica.[28] Pichardo testified that he assumes that the animals are usually purchased from licensed vendors that purchase only animals that have been properly inspected; however, he was never involved in this part of the ritual and the testimony revealed that this is not usually the case. Most animals are bought either from botanicas or from local farms that breed the animals specifically for sacrifice. Most of the time, botanicas are not licensed to sell or house animals on their premises but will buy the animals from the local farms or transport the animals into the state illegally. The animals are often kept in overcrowded and filthy conditions on the farms. Additionally, when the botanicas buy the animals, they are transported and then kept in the botanicas' back rooms, again often in extremely overcrowded conditions. The animals are not always fed and watered, but instead are kept for only a few days

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[26] In the death rites, there are usually one four--legged animal and two fowl sacrificed.

[27] Those animals are not consumed either.No witness could recall ever seeing how a carcass was disposed of, even Pichardo, who had himself performed animal sacrifice. The only testimony regarding the disposal of animal carcasses was the testimony relating to the carcasses found in public places, which some witnesses testified to as being consistent with the practice of Santeria.

[28] A botanica is a store that specializes in selling religious articles--usually those articles associated with or used in Santeria and in animals for sacrifice.

then sold for immediate sacrifice. These conditions can cause intense suffering by the animal.

There was significant testimony about the remains of animals, along with religious paraphernalia, being found in public places.[29] Pichardo admitted that these things happen, but state that some of them are probably the result of other religions that practice animal sacrifice. Pichardo did admit, however, that some of the carcasses were probably the result of Santeria practitioners who were deviating from the correct principles, at least as Pichardo interpreted them.[30]

There have been no instances documented of any infectious disease originating from the remains of animals being left in public places. Animal remains are, however, a health hazard because the remains attract flies, rats and other animals. Both vectors[31] and reservoirs[32] are created [1475] around such animal remains because the rats, flies and other animals that are attracted may themselves carry and exchange diseases and thus the risk of the spread of disease to humans is increased. Flies alone have been known to transmit up to 65 different kinds of human and animal

[29] Animal carcasses are most often found near rivers or canals, by four-way stop signs, under certain palms, and sometimes in people's lawns or on doorsteps.

[30] See footnote 14.

[31] A vector is a means by which a pathogenic organism is transmitted or transferred from one agent to another agent.

[32] A reservoir is an area--either another animal, an animate object or an inanimate object--where the organism can lodge and multiply.

diseases.[33] Areas where dead animals are left can become a harborage for rats and fleas where the spread of disease to other animals and to humans is much more likely.[34]

There was also much testimony regarding the effect on children exposed to animal sacrifices. Dr. Raul Huesmann, a research psychologist, has done extensive research on the development of aggressive[35] and violent behavior in child and adults. He specializes in the study of the effects of the observation of violence on the development of such behavior. Dr. Huesmann testified that the observation of animal sacrifice, particularly in the circumstances of the initiation rite where a number of animals are sacrificed would detrimentally affect the mental health of the child and the behavior in such a way that it would be detrimental to the community in which the child resides. Specifically, the observation would be likely to produce psychological processes that promote greater tolerance of aggressive and violent behavior and might even increase the possibility of aggressive and violent behavior by the child himself.

There are three psychological processes that are involved: 1) desensitization; 2) tolerance; and 3) imitation. Desensitization occurs when the child is exposed to repeated scenes of violence. The child stops

[33] For example, the more common diseases carried by flies include dysentery, typhoid, cholera, salmonella, salmonosis, infectious hepatitis, yaws, tracoma and many of the parasitic worms. Rats are commonly associated with plague, Leptus pyrosis, and marine typhus.

[34] Dr. Wetli, the pathologist that testified for Plaintiffs, agreed with this conclusion.

[35] The term "aggression" is used to denote intentional violence, as opposed to the term as it is sometimes used to denote assertive behavior.

reacting emotionally to those acts and the acts become more palatable to the child. Tolerance results from this process of desensitization. Imitation is the final stage. A child is more likely to imitate and be influenced by actors that are perceived as being of high status. In other words, if the child perceives the person engaging in the violent act as a high status person, the effects seem to be exacerbated. This effect would be strongest with multiple acts that are spaced out in time. Dr. Huesmann concluded that a child's observation of animal sacrifice would be likely to increase the probability that the child will behave aggressively and violently, not just against animals but against humans.

The observation of violence is only one factor in the development of aggressive and violent behavior. An individual can have violent and aggressive behavior which is totally unrelated to the observation of violence.[36] Dr. Huesmann did not testify that observation of violence would lead inalterably to violent behavior; just that such observation was more likely to promote such behavior. Whether the aggressive behavior will become serious enough to be a problem would depend on the convergence of a number of other factors.

What Dr. Huesmann did testify to, and what this Court accepts, is that there is a correlation between the observation of violence by children, especially when conducted by persons of perceived high status, and the likelihood of the development of violent and aggressive behavior.[37] The younger the child, the stronger the

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[36] For example, some persons have various kinds of tumors and abnormalities in certain areas of their brain and, as a consequence, behave very violently.

[37] Dr. Huesmann stated that "you would have people who would be more likely to engage in violent acts as adults of a comparable population not exposed to the same scenes."

effect. The Court is convinced that the observation of animal sacrifice can have a detrimental effect on a child's mental health and on that child's future behavior.

[1476] Dr. Angel Velez-Diaz, a clinical psychologist, disagreed with Dr. Huesmann's conclusions, based on his observations of the clients that he had treated. Dr. Velez-Diaz agreed that observation of violence leads to a desensitization towards violence, but did not believe that this have a negative effect. Dr. Velez-Diaz admitted that the presence of desensitization may help in the production of violent behavior but stated that many other intervening factors would have to occur for such behavior to manifest. Dr. Velez-Diaz felt that because children witnessing animal sacrifices have been prepared for that event, no negative effects would occur. It would become a normal thing, although at first it would create some fear in the child.

Dr. Velez-Diaz has never conducted any studies in the area of the observation of violence by children, but agrees that the majority of studies do find a correlation between such observation and the possibility of an increase in violent behavior. Dr. Velez-Diaz did not think that such studies were valid when applied to children observing ritualistic animal sacrifice, but did not support his conclusion factually. This Court, in exercising its function as trier of fact, finds the testimony of Dr. Huesmann more credible.

A third expert, Ms. Hendrix, an educator at Miami Dade Community College, testified that she had done a study on children's attitudes towards death and had found that children exposed to death, both animal and human, saw death as a much more natural process. Ms. Hendrix concluded that a child that had been prepared to view animal sacrifice would view that sacrifice like any normal religious experience. Ms. Hendrix does not view animal sacrifice as a violent act.

This Court did not find Ms. Hendrix's views persuasive. First, she is completely unfamiliar with the studies done by Dr. Huesmann. Second, her own research had to do with attitudes towards death, not violence. Third, she claimed no personal knowledge regarding how animals were sacrificed, nor did she claim to have any contact with children who had observed such sacrifices.

C. The Ordinances

The Church occupied land situated at 173 West 5th Street, in Hialeah, Florida, in June of 1987, and began to seek the appropriate licenses to allow it to function as an established Santeria church. The goal was to establish a church, a school, a cultural center and a museum, and to bring Santeria into the open as an established and accepted religion. The Church fully intended to perform all of the religious rituals of Santeria, including animal sacrifice. The Church is currently located at 700 Palm Avenue, Hialeah, Florida, a commercial area.

Just after the Church began to organize and to prepare the land at 173 West 5th Street for occupancy, the Hialeah City Council enacted several ordinances regulating the killing of animals: No. 87-40 (an emergency ordinance adopting the language of the state's anti-cruelty statute, passed June 9, 1987); No. 87-52 (prohibiting the possession of animals intended for sacrifice or slaughter except where zoned, passed September 8, 1987); No. 87-71 (authorizing registered groups to investigate animal cruelty complaints, passed September 22, 1987); and No. 87-72 (prohibiting the slaughtering of any animals on premises not properly zoned for that purpose, passed September 22, 1987).

The City passed the ordinances pursuant to § 828.27, which authorizes municipalities to enact ordinances which are not in conflict with Chapter 828. The ordinances do not conflict with Chapter 828, Florida

Statutes but clarify that religious sacrifice of animals is not included in the exemption provided for ritual slaughter in kosher slaughterhouses, and that animal sacrifices violate the anti-cruelty statute of the State of Florida, and the various zoning regulations of the City of Hialeah.

Although the ordinances are not religiously neutral but were intended to stop the practice of animal sacrifice in the City of Hialeah, the ordinances were not passed to interfere with religious beliefs, but rath- [1477] er to regulate conduct. The ordinances have three compelling secular purposes: 1) to prevent cruelty to animals; 2) to safeguard the health, welfare and safety of the community; and 3) to prevent the adverse psychological effect on children exposed to such sacrifices.

Plaintiffs have not been prosecuted by Defendant for any violations or intended violations of these ordinances. Additionally, no groups have been registered or authorized under 87-71 to investigate animal cruelty complaints. Plaintiffs have not sought to amend the City's laws regulating slaughterhouses, but, on July 12, 1989, for the first time sought zoning authorization to operate their current property as a slaughterhouse. At this time, there are no licensed slaughterhouses in the City of Hialeah, and zoning would not permit a slaughterhouse. Plaintiffs have not tried to challenge this zoning.

D. Discriminatory Treatment

The Church first took possession and began the cleanup of the property located at 173 W. 5th Street, in Hialeah, Florida, on April 1, 1987. The premises

required significant work before the Church could move in and actually occupy the buildings.[38]

In early April, 1987, Fernando Pichardo, the administrative director and corporate secretary of the Church, contacted the water and sewer department, Florida Power & Light, and Southern Bell. Fernando Pichardo put a $100 commercial deposit on the water and sewage service and a $200 deposit on the FP & L service. Several problems then arose. First, the waste service was not provided; although the service was billed to the Church. Second, FP & L shut off the existing power at the Church and refused to reconnect the power until the City gave it final approval and issued a Certificate of Occupancy to the Church.

In registering the Church with the City to obtain the necessary occupational license, Fernando Pichardo ran into several delays. The City required that he provide an original certificate of incorporation from the State of Florida for the Church,[39] and proof of the Church's tax free status.[40] The City also needed to check the zoning of the property to make sure that it was zoned for churches.[41] In all, it took three days to get the necessary information and documents together and register the Church. While Fernando Pichardo might have felt that

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[38] Before the Church took possession, the premises had been a used car lot and was in bad repair. There was oil on the ground and car parts lying around; windows were broken; the grass was high; and the buildings needed repair work before they could be occupied.

[39] The Certificate of Incorporation needed to have the Church's non-profit status marked on it.

[40] It later developed that documentation of sales tax exemption was not necessary.

[41] The area was zoned for churches.

this was unusual, the Court does not find it unusual at all that it took three days to process the application through the City. There was certainly no evidence that any delay resulted from any discriminatory intent, and the testimony did not reveal that the Church was treated any differently than any other applicant.

The application for licensing and zoning approval was originally filled out on May 27, 1987,[42] and completed on May 29, 1987.[43] On May 29, 1987, a Friday, the documentation was turned over to the inspector's department so that the inspectors could come out and do the inspections. On the next Monday, June 1, 1987, several inspectors turned up to do the various necessary inspections. It is the usual practice of that department to inspect premises on [1478] the next working day after receiving the application.

There were three inspections that the Church premises did not pass on June 1, 1987: the fire inspection, the electrical inspection and the plumbing inspection. The failures were not the result of discriminatory action on the part of the inspectors or any City official. The Church passed the fire inspection two days later.

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[42] The application was originally filled out and filed by Ernesto Pichardo after an official of the City came to the premises to tell him that the Church was operating in violation of the licensing requirements. That official drove Pichardo to City Hall to begin the paperwork.

[43] That application did not mention that the Church wished to perform animal slaughter. On July 10, 1989, just two weeks before this trial began, the Church for the first time applied for an occupational license to perform animal slaughter for consumption on its premises. That application has been held in abeyance pending the outcome of this litigation.

The Church failed the electrical inspection because of faulty wiring in an air conditioner and a faulty disconnect switch on the outside of the building. The electrical inspector also found an electrical meter that was not designed for that use. The inspector notified FP & L and requested that the power be disconnected from that unsafe meter. A permit was taken out by a licensed electrical contractor on July 7, 1987, and the electrical problems were corrected and completed on July 13, 1987.

The Church failed the plumbing inspection because the South Florida Code requires that for this type of use, separate bathrooms must be installed for men and women. There was only one bathroom on the premises and another bathroom had to be added. A building permit for the additional bathroom was obtained on July 29, 1987 and a plumbing permit was filed for on August 3, 1987. A plumbing inspection was done on August 4, 1987, and the final inspection was called for and issued on August 6, 1987. A certificate of occupancy was issued by the City on August 7, 1987, one day after the final inspection.

Florida Power & Light is prohibited from supplying service to a commercial property that has not been approved for an occupational license nor received an approval on the electrical inspection. The Church's power was disconnected, after a five-day notice to the Church, because it was discovered that it had been turned on without authorization and with the use of the improper meter.[44] As soon as the proper license and approvals were received, the power was turned on. FP & L did not treat this account differently than any other commercial account, except that in disconnecting the service, James Kirk first called FP & L's legal depart-

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[44] This led FP & L to conclude that the power had been turned on by other than FP & L.

ment. He testified that he did this because of the fact that it was a church involved.

The solid waste department failed to pick up the garbage, even though the Church had placed its deposit and was being billed. The water department collects the deposit and does the billing and the waste department has no control over those functions. On the day that the waste department was notified that the Church was not receiving its services, a supervisor went to the premises and obtained a letter of intent to start service on that same day. The waste department then corrected the problem, started service on that same day, and credited the Church's account with the amount that the Church had been billed.

There was testimony to the effect that the council meetings that took place concerning the Church were done in a mob atmosphere and that the council members intended to discriminate against the Church and to stop the Church. There was absolutely no evidence that any council member, at any time, attempted to influence the various licensing, zoning and building departments of the City, or the waste department, FP & L or Southern Bell. The various delays and problems that the Church encountered with its physical plant were either the result of the premises' failure to meet the necessary building requirements, or because of bureaucratic paperwork, and not because of any discriminatory intent on the part of any individual, agency or company.

Plaintiffs complained of two instances of alleged increased law enforcement scrutiny. First, a "police perimeter" was established around the Church premises when the first outdoor mass was held. Second, a police vehicle stopped Fernando Pichardo one night as he was leaving the premises with some trash and asked him what he was doing. When he replied that just leaving the premises, no further conversation was had. This Court does not hold that either of these instances were the result of [1479] a discriminatory intent by the City,

but, instead, were just instances of the police carrying out their duties. The "police perimeter" was, in fact, a protection for the Church due to the intense and often hostile media coverage.

The Church also alleges that the ordinances were passed because of the council members' intent to discriminate against the Church and to keep the Church from establishing a physical presence in the City. There was no evidence to support this contention. All the evidence established was that the council members' intent was to stop the practice of animal sacrifice in the City. Although this concern was prompted by the Church's public announcement that it intended to come out into the open and practice its religious rituals, including animal sacrifice, the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by.

CONCLUSIONS OF LAW

A. Standing

Plaintiffs seek to have the ordinances promulgated by the City of Hialeah declared unconstitutional, both in their totality and as applied to Plaintiffs. The Declaratory Judgment Act, 28 U.S.C. § 2201, requires that before a court can issue declaratory relief, an "actual controversy" must exist. *Emory v. Peeler*, 756 F.2d 1547 (11th Cir. 1985). "[T]he continuing controversy may not be conjectural, hypothetical, or contingent; it must be real and immediate, and create a definite, rather than speculative threat of future injury." *Id.* at 1551-52. Further, "federal courts should not consider the abstract constitutionality of municipal policies." *Kerr v. City of West Palm Beach*, 875 F.2d 1546, 1554 (11th Cir. 1989).

Standing to sue requires that a plaintiff has suffered a distinct and palpable injury that is likely to be redressed if the requested relief is granted. *Simon v.*

Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976). Redressability is an essential component of the standing requirement and Plaintiffs must fail the test if removal of one purported barrier to their conduct would not secure any meaningful relief because other barriers remained. *Greater Tampa Chamber of Commerce v. Goldschmidt*, 627 F.2d 258, 261-65 (D.C. Cir. 1980); *Church of Scientology Flag Service Organization, Inc. v. City of Clearwater*, 777 F.2d 598, 606 (11th Cir.1985), *cert. denied*, 476 U.S. 1116, 106 S.Ct. 1973, 90 L.Ed.2d 656 (1986).

If this Court were to find that the ordinances were invalid, Plaintiffs would still be prohibited from performing ritual sacrifices under § 828.12 of the Florida Statutes. See Opinion Attorney General 87-56 (1987). Additionally, there are several provisions of the Hialeah City Code that would apply, including zoning provisions, health and sanitation provisions and licensing provisions.

This Court also remains troubled by the ripeness issue. In the instant case, Plaintiffs have not attempted to show repeated prosecutions, or pointed to any enforcement under the ordinances. Additionally, at no point have Plaintiffs raised any free exercise challenge addressed toward the validity of slaughterhouse zoning regulations that Plaintiffs might encounter. Instead, Plaintiffs assert that the city council passed the ordinances in an attempt to target the Church in particular and the practitioners of Santeria generally. Specifically, Plaintiffs allege that the passage of the ordinances was intended to force the Church out of Hialeah, and to chill the religious freedom of Santeria practitioners by imposing criminal sanctions on practices that are an integral part of that religion. This Court therefore restricts itself to the consideration of those issues, and will not resolve the abstract questions of whether all laws restricting animal sacrifice for religious purposes are unconstitutional, or whether Plaintiffs could practice

animal sacrifice if they were in an area zoned for slaughterhouses.

B. State Statutory Preemption

The first argument presented by Plaintiffs is that the City's ordinances are invalid because the ordinances are in conflict **[1480]** with Chapter 828, Florida Statutes. Specifically, Plaintiffs argue that the ordinances conflict with Florida law because: 1) § 828.22(3) protects the ritual slaughter of animals; and 2) the ordinances provide for a criminal penalty and authorize private parties to assist in the prosecution of violations of the ordinance and thus violate the restrictions on ordinances set forth in F.S. § 828.27.

An ordinance need not be identical with a Florida statute in order to be valid. Validity is presumed and the party challenging a municipal ordinance bears the burden of proving that ordinance is invalid. *Wallace v. Town of Palm Beach*, 624 F.Supp. 864, 869 (S.D. Fla. 1985); *Bennett M. Lifter, Inc. v. Metropolitan Dade County*, 482 So.2d 479, 481 (Fla. Dist. Ct. App. 1986); *City of Miami v. Kayfetz*, 92 So.2d 798, 801 (Fla. 1957). An ordinance is preempted by state law only where the municipal ordinance directly conflicts with the state statute. *Boven v. City of St. Petersburg*, 73 So.2d 232, 234 (Fla. 1954). Thus, the ordinances in the case *sub judice* are only invalid if they conflict with F.S. § 828.27(4).

Florida Statute § 828.27(4) permits a municipality to adopt an ordinance identical to Chapter 828, but forbids a "municipal ordinance relating to animal control or cruelty [from] conflict[ing] with the provisions of" Chapter 828. A municipality need not adopt the exact wording of Chapter 828. Additionally, a municipality may go beyond the state statute so long as it does not conflict with the statute. *Lamar-Orlando Outdoor Advertising v. City of Ormand Beach*, 415 So.2d 1312, 1321 (Fla. Dist. Ct. App. 1982); *City of Miami Beach v.*

Rocio Corp., 404 So.2d 1066, 1070 (Fla. Dist. Ct. App. 1981). Municipalities often exercise this privilege by providing for greater enforcement measures or stricter controls.

Plaintiffs first claim is that the ordinances conflict generally with the state slaughter laws, F.S. §§ 828.22-828.26, and, specifically, with the ritual slaughter exemption contained in F.S. § 828.22(3). Sections 828.22-828.26, Florida Statutes, relate to the use of humane methods in the slaughter of livestock for food. See Opinion Attorney General 87-56 (1987). The statute was enacted to conform Florida law to the provisions of the Federal Humane Slaughter Act of 1958, and is nearly identical to that Act. 7 U.S.C. §§ 1901-1906.

The exemption for "ritual slaughter" contained in § 828.22(3) applies only to religious slaughtering of animals for food. Opinion Attorney General 87-56 (1987).[45] For example, an exception has been recognized to apply to the production of Kosher meat where animals are slaughtered according to the Jewish ritual slaughtering method known as *shehitah*. *Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974). The Hialeah ordinances, on the other hand, only prohibit sacrificing animals where the primary purpose is not food consumption. Accordingly, there is no conflict between the ordinances and § 828.22(3).

Animal sacrifice also violates Florida Statutes § 828.12, which makes it a criminal violation for one to "unnecessarily" or "cruelly" kill an animal. See *Wilkerson v. State*, 401 So.2d 1110, 1112 (Fla. 1981). The Attorney General's opinion notes that the ritual killing of an animal does not constitute a "necessary" killing so as to

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[45] "[O]pinions of the attorney general are persuasive and entitled to great weight in construing Florida Statutes." State v. Office of Comptroller, 416 So.2d 820, 822 (Fla. Dist. Ct. App. 1982).

make the prohibition in § 828.12 against unnecessarily or cruelly killing an animal inapplicable. Hialeah ordinance 87-52 defines "sacrifice" as to "unnecessarily kill, torment, torture or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." Thus, the Hialeah ordinance and the Florida Statutes are consistent in their treatment of animal sacrifice.

Plaintiffs next argue that, by exempting ritual slaughter from the provisions of the Act, the legislature intended to preempt municipalities from legislating any regulations whatsoever on ritual slaughter, and thus, Ordinances 87-52 and 87-72 impermissibly regulate slaughter.

[1481] Neither ordinance conflicts with the exemption afforded to ritual slaughter. Ordinance 87-52 states that "[n]o person shall ... slaughter ... any ... animal, intending to use such animal for food purposes." Ordinance 87-52 also states that "nothing in this ordinance is to be interpreted as prohibiting any licensed establishment for slaughtering for food purposes where such activity is properly zoned and/or permitted under state and local law and under rules promulgated by the Florida Department of Agriculture." Therefore, ordinance 87-52 only bans slaughter if done outside the regulatory requirements of both local and state laws.

The State of Florida left the siting and inspection of slaughterhouses to localities. See Fla. Stat. § 585.34(3) ("Municipal corporations may establish and maintain the inspections of slaughterhouses"). Land-use control is a local prerogative that is exercised through the use of zoning ordinances. See Fla. Stat. §§ 163.3161--163.3213; *Hillsborough Ass'n for Retarded Citizens, Inc., v. City of Temple Terrace*, 332 So.2d 610, 612-13 (Fla. 1976). Zoning laws and regulations that are enacted by municipalities in the exercise of the municipalities' police power are proper. *Scurlock v. City of Lynn Haven, Fla.*, 858 F.2d 1521, 1525 (11th Cir.1988) ("Municipalities may

zone land to pursue any number of legitimate objectives related to the health, safety, morals or general welfare of the community."). Accordingly, the City of Hialeah acted properly in enacting zoning regulations that clarified that ritual sacrifice was not a protected practice under the ritual slaughter exception to the Humane Slaughter Act, and that all slaughters could only be performed in areas zoned for that use.[46]

Plaintiffs next challenge the validity of the ordinances on the ground that the Hialeah ordinances provide for a criminal penalty, while § 828.27(2) only permits a civil penalty. Thus, Plaintiffs argue that the ordinances are in conflict with the state statute and must be struck down.

Section 828.27(2) controls penalties in "ordinances relating to animal control or cruelty." Ordinance 87-72 is an ordinance "Prohibiting The Slaughtering Of Animals Upon Any Premises in the City of Hialeah, Florida, Except Those Premises Properly Zoned As A Slaughter House." Ordinance 87-72 provides, in part, that "[i]t shall be unlawful for any person, persons, corporations or associations to slaughter any animal on any premises in the City of Hialeah, Florida, except those properly zoned as a slaughter house, and meeting all the health, safety and sanitation codes prescribed by the City for the operation of a slaughter house.

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[46] The City of Hialeah presently has no areas that are zoned for slaughterhouses. As mentioned before in footnote 41, the Church on July 10, 1989, just before the trial of this matter, applied for an occupations license to perform animal slaughter for consumption on Church premises. Therefore, the issue of whether the Church could receive a zoning variance to perform animal sacrifice, where the animal is to be consumed, has never been directly addressed, and is not before the Court at this time.

Ordinance 87-52, and the ordinance amended by it, Ordinance 87-40, also relate to zoning, and provide that:

> Nothing in this ordinance is to be interpreted as prohibiting any licensed establishment from slaughtering for food purposes any animals which are specifically raised for food purposes where such activity is properly zoned and/or permitted under state and local law and under rules promulgated by the Florida Department of Agriculture.

Therefore, all three of these ordinances are zoning regulations that explicitly prohibit certain acts except where properly zoned. The penalty requirements of the ordinances, therefore, do not conflict with any penalty requirement if Chapter 828, which is limited only to "ordinance related to animal control or cruelty." While one of the secular purposes of ordinances 87-40, 87-52, and 87-72 is to prevent cruelty to animals, those ordinances are first and foremost zoning ordinances, and are not in and of themselves, "ordinances related to animal control or cruelty."

The City of Hialeah clearly has the authority to prescribe penalties for zoning [1482] violations different from those relating to animal control or cruelty. Because the ordinances do not solely relate to animal control or cruelty, the statute establishing the maximum penalty for violation of such an ordinance is inapplicable.

Additionally, even if § 828.27 did apply to the ordinances, that provision specifically authorizes municipalities to enact an ordinance identical to the state law "except as to penalty." While § 828.27 focuses on ordinances with a civil penalty, another section of that Chapter, § 828.12, directly provides a criminal punishment, as a first degree misdemeanor, for unnecessarily

or cruelly beating, mutilating or killing an animal.[47] The City's criminal penalties are therefore fully consistent with the state statutes prescribed penalty for the same misconduct.

Plaintiffs last challenge to the validity of the ordinances concerns the provisions in ordinances 87-71 and 87-72 which provide that agents of private organizations may "assist[ ] in the prosecution of any violation[s]." Plaintiffs argue that this provision conflicts with the state law.

Ordinances 87-71 and 87-72 do not provide for prosecution by agents, only that such agents may assist in the prosecution.[48] This suggests that such agents could assist in testifying, providing evidence, and generally aiding the municipality in pursuing a prosecution. Further, the state statute itself has a provision that provides for appointed agents to investigate violators. See § 828.03. This provision was amended to "provide for investigation rather than prosecution of offenders by agents of described societies." Fla. Stat. Ann., Chapter 828, at 431. The Hialeah ordinances certainly do not provide for the agents to prosecute violators, but only to assist in the prosecution. This is certainly within the purview of Chapter 828 and is therefore not in conflict with that statute.

The ordinances at issuance here clearly do not conflict with Florida state law and, therefore, are not preempted. Accordingly, this Court must now address directly the constitutional issue raised by Plaintiffs.

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[47] Section 828.12 was recently amended to include a provision making intentional torture of animals punishable as a felony. See Ch. 89-194.

[48] To date, the City of Hialeah has never appointed any agents under this provision.

C. First Amendment Challenge

This Court feels that there is a need to put this case in the proper perspective. Plaintiffs essentially represent immigrants who have brought to these shores not only the traditions and customs normally attributable to a migrating people, but also the religion of Santeria, a religion which has only recently begun to be practiced in this country. Without question, it extends back to Africa, where it was an openly acceptable form of religion some 400 years ago. After having travelled for four centuries and thousands of miles, it came to Miami and has an estimated 50,000 to 60,000 religious followers in this community.

Migration has been the lifeblood of this country. As each of the tens of thousands came, they brought with them their unique heritages which were ultimately integrated and woven into the fabric which is America. The strength of that fabric has grown over two centuries.

Those who fled poverty found opportunity; those who were deprived of the opportunity of expression found freedom of speech; and those who were deprived of the opportunity to worship God found freedom of religion. These newfound freedoms, however, were not unabridged and absolute. The First Amendment to the United States Constitution reads today as it did when it was ratified on December 15, 1791:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

With the adoption of the Fourteenth Amendment on July 9, 1868, it specifically made the First Amendment applicable to [1483] state action when it provided that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States." If one were to adopt as a constitutional philosophy the writings of John Stuart Mill or John Locke, the privileges afforded under the First Amendment through the Fourteenth Amendment, the freedoms of speech and religion, would be incapable of restriction in any form. As it pertains to particularly freedom of speech, certainly Mr. Justice Black and Mr. Justice Douglas would have seen fit to do so. *See e.g.*, Black, the Bill of Rights, 35 NYU L. Rev. 865 (1960); *Roth v. United States*, 354 U.S. 476, 508, 77 S.Ct. 1304, 1321, L.Ed.2d 1498 (1957) (Douglas, J., dissenting). Neither Justices Black nor Douglas, however, expressed the constitutional philosophy of the courts in giving meaning to the First Amendment to the United States Constitution.

No one for a moment would espouse the view that freedom of speech would allow an individual to shout "Fire" in a crowded theater. Although all ideas having even the slightest redeeming social importance have the full protection of the Constitution, implicit in the history of the First Amendment is the rejection of obscenity as being utterly without redeeming social importance. *Alberts v. California*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308-09, 1 L.Ed.2d 1498 (1957).

Freedom of religion, like freedom of speech, is subject to a similar analysis when we are dealing, as here, with the manner in which the religion is conducted rather than the beliefs of those seeking to exercise it. It is the former and not the latter which is the subject matter of this Court's opinion.

Plaintiffs claim that the City's ordinances unconstitutionally impinge upon their free exercise of religion. The Eleventh Circuit has set forth a framework to be used when a court is addressing this issue. *Grosz v. City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983), *cert. denied*, 469 U.S. 827, 105 S.Ct. 108, 83 L.Ed.2d 52

(1984).[49] Before the Court balances competing governmental and religious interests, the government's action faces two threshold tests: the law must regulate conduct rather than belief, and it must have both a secular purpose and effect. *Id.* at 733. The government in the case at hand has met both tests.

First, the ordinances clearly are directed at conduct and not belief. The conduct sought to be prescribed is the performance of animal sacrifice. The ordinances do not attempt to regulate belief and thus the law clearly meets the first threshold test.

The second threshold test is whether the ordinances have a secular purpose and effect. *Id.* at 733. Defendant acknowledges that the challenged ordinances arose in response to the opening of Plaintiff Church in the City; however, that does not necessarily indicate that the purpose of the ordinances was to exclude the Church from the City. Instead, the evidence showed that the Defendant responded to Plaintiffs' announced intention that Plaintiffs planned to conduct animal sacrifices.

Defendant was aware that animal sacrifices were being conducted in private homes. That practice was becoming an increasing problem and the Church's announcement triggered this legislative action, which was not aimed solely at Plaintiffs, but was an attempt to address the issue of animal sacrifice as a whole.

The ordinances do not on their face violate the secular purpose test. Ordinance 87-40 adopts the State's animal cruelty laws and does not mention religious

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[49] The district court in United States v. Billie, 667 F.Supp. 1485, 1494-97 (S.D. Fla. 1987), relied on the analytical steps set forth in *Grosz* to evaluate a Seminole Indian's free exercise challenge to a conviction for taking a Florida panther in violation of the Endangered Species Act.

conduct at all. Ordinance 87-72 prohibits anyone from slaughtering animals anywhere in the City except in properly zoned slaughterhouses. Ordinance 87-52, adopted from the model statute provided by the Humane Society of the United States to the City Attorney's office, provides that "[n]o person shall ... possess, sacrifice, or slaughter any ... animal for food purposes." This section applies to "any group or indi- [1484] vidual that kills, slaughters or sacrifices animals for any type of ritual." Ordinance 87-52 therefore acts as a blanket and facially neutral prohibition on the killing of animals by anyone for any reason, except in slaughterhouses. This ordinance was not meant to single out persons engaged in ritual sacrifice, but to put those persons on notice that the state exemption for ritual slaughter only applied to commercial ritual slaughter, done in slaughterhouses.

Ordinance 87-71 amends 87-52 to include prosecutorial assistance by registered agents and reiterates the absolute prohibition of sacrifice.[50] The use of the phrase "ritual or ceremony," in ordinances 87-52 and 87-71, does not impermissibly target religious conduct. A federal court, in discussing the meaning of the ritual slaughter exception in the Federal Humane Slaughter Act, recognized that "ritual" is not synonymous with "religious." *Jones v. Butz*, 374 F.Supp. 1284, 1292-93 (S.D.N.Y.), *aff'd*, 419 U.S. 806, 95 S.Ct. 22, 42 L.Ed.2d 36 (1974).[51]

"Ritual" or "ceremony," therefore, reaches not just demonstrably bona fide religious conduct, but also

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[50] Sacrifice is defined as the unnecessary killing of an animal "in a public or private ritual or ceremony not for the primary purpose of food consumption."

[51] Lower courts are bound by the summary decisions of the Supreme Court, unless reversed by that Court. *Hicks v. Miranda*, 422 U.S. 332, 334-45, 95 S.Ct. 2281, 2284-85, 45 L.Ed.2d 223 (1975).

includes the killing of animals by groups that would probably not enjoy First Amendment protection, such as satanic cults. Further, even if the use of the words "ritual" and "ceremony" are understood as targeting primarily religious conduct, nothing in the First Amendment prevents a municipality from specifically regulating such conduct when it is deemed inconsistent with public health and welfare.[52]

Strict religious neutrality is not required by the First Amendment. *See Wallace v. Jaffree*, 472 U.S. 38, 82-83, 105 S.Ct. 2479, 2503, 86 L.Ed.2d 29 (1985) (O'Connor, J., concurring); *McDaniel v. Paty*, 435 U.S. 618, 639, 98 S.Ct. 1322, 1334-35, 55 L.Ed.2d 593 (1978) (Brennan, J., concurring) (noting that "government [may] take religion into account when necessary to further secular purposes"). Courts have repeatedly upheld laws explicitly mentioning religious conduct so long as they serve a secular purpose. *See e.g., Jones v. Butz*, 374 F.Supp. at 1292-93 (noting that explicit religious exemptions in laws are permissible, citing Sunday closing and conscientious objector decisions). Thus, in this case, the ordinances have at most an effect on Plaintiffs' religious conduct that is incidental to the ordinances' secular purpose and effect.

After the two threshold tests are passed, the court is faced with the difficult task of balancing governmental and religious interests. This "balance depends upon the cost to the government of altering its activity to allow the religious practice to continue unimpeded versus the cost to the religious interest imposed by the government activity." *Grosz*, 721 F.2d at 734. However, before engaging in that balancing process, the Plaintiffs must identify the costs on their religious activities imposed by

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[52] Whether the conduct is in fact incompatible with public health and welfare is left to the balancing phase of the free exercise inquiry.

the government, and these costs must be the consequence of legally cognizable infringements on religious freedom.[53]

[1485] Plaintiffs have shown that the practice of animal sacrifice is a integral part of their religion. Further, the evidence has established that not all of the animals sacrificed are consumed.[54] The fact that Plaintiffs have never directly attacked the zoning requirements for slaughterhouses does not dispose of the larger issue of the killing of animals not for food purposes.[55] Thus,

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[53] Plaintiffs cannot maintain a facial challenge to the ordinances. A statute is overbroad on its face only if it is unconstitutional "in every conceivable application" or seeks to prohibit a broad range of protected conduct. *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 796, 104 S.Ct. 2118, 2124, 80 L.Ed.2d 772 (1984); *see also New York v. Ferber*, 458 U.S. 747, 767-74, 102 S.Ct. 3348, 3359-64, 73 L.Ed.2d 1113 (1982); *Clean-Up '84 v. Heinrich*, 759 F.2d 1511, 1513 (11th Cir. 1985). Plaintiffs do not argue that the ordinances would be unconstitutionally applied to the killing of animals for nonreligious purposes, or to inhumane killing. "The possibility that [an ordinance] might be unconstitutionally applied to certain religious practices does not render it void on its face where the remainder of the [ordinance] covers a whole range of easily identifiable and constitutionally proscribable conduct." *Billie*, 667 F.Supp. at 1495. Because these ordinances can constitutionally apply to a wide range of conduct other than Plaintiffs', the ordinances are not void on their face.

[54] For example, the animals sacrificed in healing rites and in death rites are never consumed.

[55] Plaintiffs also contend that because the Plaintiff Church is not a "commercial" enterprise, the Church could not qualify under a slaughterhouse zoning variance even if such a variance could be obtained.

this Court has no doubt that the ordinances do burden Plaintiffs' religious practices.

The ordinances at issue were passed by the City because of the perceived need to prevent cruelty to animals, to safeguard the health, welfare and safety of the community, and to prevent possible adverse psychological effects on children exposed to such sacrifices.

1) Health Hazard

Courts have routinely upheld bans on religious conduct when such conduct posed a clear danger to the health of the public. For example, courts have, without exception, upheld ordinances and injunctions prohibiting ritual snake handling even when such snake handling was central to the religious practice. *See e.g., State ex rel. Swann v. Pack*, 527 S.W.2d 99, 109 & n. 15 (Tenn. 1975), *cert. denied*, 424 U.S. 954, 96 S.Ct. 1429, 47 L.Ed.2d 360 (1976). Similar reasoning has been used by courts in upholding ordinances banning the use of marijuana despite its centrality to certain religious practice. *See e.g., United States v. Middleton*, 690 F.2d

820, 824-26 (11th Cir.1982), cert. denied, 460 U.S. 1051, 103 S.Ct. 1497, 75 L.Ed.2d 929 (1983).[56]

The compelling interests in public health and welfare that motivated the passage of legislation banning snake handling and marijuana use and persuaded the courts to uphold those laws are precisely the government interests at issue here. The evidence at trial revealed a risk of physical harm to members of both Plaintiff Church and the public from disease and infestation. It is beyond dispute that the government has a compelling interest in controlling disease. *See e.g., Prince v. Massachusetts*, 321 U.S. 158, 166-67, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944); *Johansson v. Board of Animal Health*, 601 F.Supp. 1018, 1027 (D. Minn.1985); *Conner v. Carlton*, 223 So.2d 324 (Fla. 1969), *appeal dismissed for want of a substantial fed. ques.*, 396 U.S. 272, 90 S.Ct. 481, 24 L.Ed.2d 417 (1969).

As discussed in detail in this Court's findings of fact, animal carcasses are often left in public places, leading to an increased risk of disease. Additionally, the animals are often obtained from sources that have not maintained the animals in sanitary conditions; nor have the animals gone through any inspection process. This

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[56] In *Middleton*, this Circuit held that any free exercise interest in marijuana use was outweighed by the compelling state interest in regulating drug use. *Middleton*, 690 F.2d at 825-26. The Court rejected various state court decisions permitting the religious use of peyote by the Native American Church as not binding and inconsistent with circuit precedent to the contrary. *Id.* at 826. *See also Peyote Way Church of God, Inc. v. Meese*, 698 F.Supp. 1342, 1346-49 (N.D.Tex.1988) (limited federal statutory exemption permitting Native Americans to use peyote was nothing more than a grandfather clause and the court would not expand it into a religious exception regardless of the sincerity of plaintiff's beliefs).

is especially dangerous when dealing with chickens, due to the increased risk of salmonella. Priests have no training in recognizing diseased animals, but rely solely on observation of the animals, an unreliable way of detecting disease. The City, therefore, has more than met its burden of proving that there is a substantial health risk generated by the killing of these animals in areas not regulated as slaughterhouses.

2) Welfare of Children

The governmental interest in guaranteeing the welfare of children is particularly strong. *See e.g., New York v. Ferber*, 458 U.S. 747, 756-58, 102 S.Ct. 3348, 3354-55, 73 L.Ed.2d 1113 (1982); *United States v. Nemuras*, 567 F.Supp. 87, 89 (D. Md. 1983), **[1486]** *aff'd*, 740 F.2d 286 (4th Cir.1984); *Griffin v. State*, 396 So.2d 152, 155 (Fla. 1981). The Supreme Court has held that the risk of emotional injury to children outweighs countervailing religious and parental rights. *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Jehovah's Witnesses v. King County Hospital*, 278 F. Supp. 488, 504 (W.D.N.D. Wash.1967), aff'd, 390 U.S. 598, 88 S.Ct. 1260, 20 L.Ed.2d 158 (1968).

The evidence at trial established that exposure to the ritual sacrifice of animals imperils the psychological well-being of children and increases the likelihood that a child will become more aggressive and violent. Based on the expert testimony, the City has shown that the risk to children justifies the absolute ban on animal sacrifice.

3) Cruelty to Animals

Equally compelling is the City's interest in the protection of animals from cruelty and unnecessary killing. "It has long been the public policy of this country to avoid unnecessary cruelty to animals." *Human Society of Rochester v. Lyng*, 633 F.Supp. 480, 486 (W.D.N.Y. 1986). The Florida Supreme Court observed more than two decades ago that "it is now generally recognized that legislation which has for its

purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power." *C.E. America, Inc. v. Antinori*, 210 So.2d 443, 444 (Fla. 1968).

Plaintiffs presented testimony that the killing of the animals is not inhumane. This Court does not agree. Expert testimony established that the method of killing is unreliable and not humane, and that the animals, before being sacrificed, are often kept in conditions that produce a great deal of fear and stress in the animal. Often the animals are kept in filthy, overcrowded conditions, and sometimes are not given adequate food or water. Additionally, the animals perceive both pain and fear during the actual sacrificial ceremony.

The policies and purposes underlying the ordinances therefore reflect three separate and compelling governmental interests; public health and the control of disease, the risk to children, and animal welfare. Moreover, the City has a compelling interest in prohibiting the slaughter or sacrifice of animals within areas of the City not zoned for slaughterhouse use. The interest of the city in prohibiting slaughter of animals in private homes and residential area is particularly strong. The assertion that the slaughter is for religious purposes does not diminish this interest because the City may regulate the place and manner of religious expression as long as there is no content classification and so long as the regulation is reasonable. *See Grosz*, 721 F.2d at 740.

An ordinance will withstand constitutional challenge if an exception for religious purpose will "unduly interfere with fulfillment of the governmental interest." United States v. Lee, 455 U.S. 252, 259, 102 S.Ct. 1051, 1056, 71 L.Ed.2d 127 (1982). Whether an exception for religious purposes would "unduly interfere" with government policy is a looser standard than whether an ordinance is "closely tailored" or the "least restrictive means" standards urged by Plaintiffs. Moreover, Plaintiffs have not shown that their proposed alternatives

would satisfy the public health and animal welfare concerns.[57] Plaintiffs simply speculate, without any factual support, that if they are allowed to practice openly, they would be able not only to control all aspects of the animal sacrifices in a way which would satisfy these concerns,[58] but that, through their example, all other practitioners of Santeria [1487] would conform their behavior to follow the same guidelines.[59]

Most importantly, the carving out of an exception for any group would defeat the City's valid and compelling interests. Courts have consistently refused religious exemptions when they would create administrative or

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[57] The alternatives do not address the issues of child welfare or the unreliable method of killing, among others.

[58] For example, Pichardo testified that the Church would follow any reasonable restrictions on how the animals are obtained and maintained, as well as how the carcasses are disposed of. While this Court believes that Plaintiff is sincere, this is simply not a workable solution because Pichardo himself admits that he doesn't even have an estimate of how many people practice Santeria in the City; nor does he know how those people obtain the animals or dispose of the carcasses. He can only speculate.

[59] Pichardo could give this Court no assurance that those who follow, in his eyes, a deviant form of Santeria, would conform to any regulations at all. Additionally, the religion has always been a secret religion and much is still not known. It is inconceivable that the religious practitioners would accept the type of regulatory controls on their activities that such conformity would require, especially in light of the fact that their sacrifice, by the terms of their religion, must be kept secret and cannot be monitored. A less restrictive ordinance simply could not be enforced.

enforcement problems. *See e.g., Sherbert v. Verner*, 374 U.S. 398, 408-09, 83 S.Ct. 1790, 1796-97, 10 L.Ed.2d 965 (1963); *Grosz*, 721 F.2d at 739. The testimony revealed the extent of the problems caused by animal sacrifice. A large part of the problem is because of the number of practitioners, who are not limited to those who practice Santeria. It is often difficult, if not impossible, to tell who is responsible for a particular sacrifice. A religious exception for Santeria practitioners is simply unworkable because it is unenforceable. Any contemplated exception would have to cover all religions. *See United States v. Aguilar*, 871 F.2d 1436, 1469-70 n. 32 (9th Cir. 1989). The exception would, in effect, swallow the rule.

A balance of the compelling government interest served by the ordinances against the burden of Plaintiffs of not being allowed to ritually sacrifice animals, with all of the attendant risks to public health and animal welfare, must be resolved in favor of the City. Even absolute proscriptions of religious conduct are constitutional when the law serves a compelling state interest. *See e.g., Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1879) (cited with approval last Term in *Employment Division v. Smith*, 485 U.S. 660, ----, 108 S.Ct. 1444, 1451, 99 L.Ed.2d 753, 764 (1988)). Compelling governmental interests, including public health and safety and animal welfare, fully justify the absolute prohibition on ritual sacrifice at issue here, and any effort to exempt purportedly religious conduct from the strictures of the City's laws would significantly hinder the attainment of those compelling interests. Therefore, this Court holds that the challenged ordinances do pass constitutional muster.

D. 1983 Claim

This Court granted Summary Judgment as to the Mayor and City Councilmen and held that the ordinances and resolutions that they passed did not amount to

an official policy of harassment. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 688 F.Supp. 1522 (S.D. Fla. 1988). At most, this Court found that Plaintiffs had alleged "nothing more than that Defendants, by their policies, created an atmosphere conducive to acts such as these taking place." *Id.* at 1529.

Where an injury is inflicted solely by its employees or agents, a local government is not liable. *See Polk County v. Dodson*, 454 U.S. 312, 325, 102 S.Ct. 445, 453, 70 L.Ed.2d 509 (1981) (respondeat superior liability unavailable under § 1983). It is only when execution of a municipality's official policy or custom inflicts injury that the government as an entity can be held liable under § 1983. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978). Boilerplate allegations of municipal "policy," without any factual allegations to support them, do not establish a § 1983 claim against a municipality. *See City of Canton v. Harris*, 489 U.S. ----, ----, 109 S.Ct. 1197, 1205, 103 L.Ed.2d 412, 427 (1989). A single instance of unconstitutional conduct is insufficient to impose civil rights liability on a city unless there is proof that the activity was covered by an existing, unconstitutional municipal policy that can be attributed to a municipal policymaker. *Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 105 S.Ct. 2427, 2436, 85 L.Ed.2d 791 (1985). The existence of an unconstitutional policy and its origin must be separately proved and [1488] where the policy relied on is not itself unconstitutional, the plaintiff is required to present more proof than a single incident to establish both the municipality's fault and the causal connection between the policy and the constitutional deprivation. *Id.*

Cases involving analogous constitutional challenges to municipal land-use restrictions place the burden of proving discriminatory purpose or intent on plaintiffs. *See, e.g., Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 n. 4, 106 S.Ct. 3172, 3178 n. 4, 92 L.Ed.2d 568 (1986);

Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 270, n. 21, 97 S.Ct. 555, 566, n. 21, 50 L.Ed.2d 450 (1977). Nor does evidence of a negative public outcry directed against the Church prove discriminatory zoning. *See Town of Hialeah Gardens v. Hebraica Community Center, Inc.*, 309 So.2d 212, 215 (Fla. Dist. Ct. App. 1975).

Plaintiffs have completely failed to prove any acts of discrimination or harassment in violation of Plaintiffs' right to freely exercise their religion. As discussed at length in this Court's findings of fact, the Plaintiffs' allegations of discrimination by the City are not supported by the facts.

CONCLUSION

The ordinances passed by the City of Hialeah regulating the ritual sacrifice of animals are consistent with both state statutes and the United States Constitution. The ordinances target the indiscriminate slaughter of animals in areas of the City not zoned for such activities because of the many attendant risks to both public health and animal welfare. The ordinances are not targeted at the Church of the Lukumi Babalu Aye and practitioners of Santeria, but are meant to prohibit all animal sacrifice, whether it be practiced by an individual, a religion, or a cult. Additionally, there was no proof of any discriminatory action by the City against the Plaintiff Church or any of its practitioners.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Court finds in favor of Defendant and against Plaintiffs, and FINAL JUDGMENT is hereby entered in favor of Defendant, CITY OF HIALEAH, and against Plaintiffs, who shall go hence without day. Each party shall bear its own costs and attorneys' fees.

DONE AND ORDERED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 90-5176

FILED

U.S. COURT OF APPEAL
ELEVENTH CIRCUIT

AUG 21, 1991

MIGUEL J. CORTEZ
CLERK

CHURCH OF THE LUKUMI BABALU AYE, INC.,
A non-profit corporation and
ERNESTO PICHARDO,

Plaintiffs-Appellants,

versus

CITY OF HIALEAH,

Defendant-Appellee.

Appeal from the United States District
Court for the
Southern District of Florida

ON PETITIONS FOR REHEARING AND

SUGGESTIONS OF REHEARING IN BANC

(Opinion June 11, 1991, 11 Cir., 198__, ___F.2d___).

Before FAY and COX, Circuit Judges, HENDERSON, Senior Circuit Judge.

PER CURIAM:

(x) The Petitions for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestions of Rehearing In Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Emmett R. Cox
United States Circuit Judge

ORD-42

CITY OF HIALEAH ORDINANCE NO. 87-40
Adopted June 9, 1987

WHEREAS, the citizens of the City of Hialeah, Florida, have expressed great concern over the potential for animal sacrifices being conducted in the City of Hialeah; and

. . . .

Section 1. The Mayor and City Council of the City Hialeah, Florida, hereby adopt Florida Statute, Chapter 828 - "Cruelty To Animals" (copy attached hereto and made a part hereof), in its entirety (relating to animal control or cruelty to animals), except as to penalty.

. . . .

CITY OF HIALEAH ORDINANCE NO. 87-52
Adopted September 8, 1987

WHEREAS, the residents and citizens of the City of Hialeah, Florida, have expressed great concern regarding the possibility of public ritualistic animal sacrifices within the City of Hialeah, Florida;

. . . .

Section 1. Chapter 6 of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended by adding thereto two (2) new Sections 6-8 "Definitions" and 6-9 "Prohibition Against Possession Of Animals for Slaughter or Sacrifice", which is to read as follows:

Section 6-8. Definitions

1. Animal - any living dumb creature.
2. Sacrifice - to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.

3. Slaughter - the killing of animals for food.

Section 6-9. Prohibition Against Possession of Animals for Slaughter or Sacrifice.

1. No person shall own, keep or otherwise possess, sacrifice, or slaughter any sheep, goat, pig, cow or the young of such species, poultry, rabbit, dog, cat, or any other animal, intending to use such animal for food purposes.
2. This section is applicable to any group or individual that kills, slaughters or sacrifices animals for any type of ritual, regardless of whether or not the flesh or blood of the animal is to be consumed.
3. Nothing in this ordinance is to be interpreted as prohibiting any licensed establishment from slaughtering for food purposes any animals which are specifically raised for food purposes where such activity is properly zoned and/or permitted under state and local law and under rules promulgated by the Florida Department of Agriculture.

CITY OF HIALEAH ORDINANCE NO. 87-71
Adopted September 22, 1987

WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community;

. . . .

Section 1. For the purpose of this ordinance, the word sacrifice shall mean: to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.

Section 2. For the purpose of this ordinance, the word animal shall mean: any living dumb creature.

Section 3. It shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida.

CITY OF HIALEAH ORDINANCE NO. 87-72
Adopted September 22, 1987

WHEREAS, the City Council of the City of Hialeah, Florida, has determined that the sacrificing of animals on the premises other than those properly zoned as a slaughter house, in contrary to the public health safety and welfare of the citizens of Hialeah, Florida.

. . . .

Section 1. For the purpose of this Ordinance, the word slaughter shall mean: the killing of animals for food.

Section 2. For the purpose of this Ordinance, the word animal shall mean: any living dumb creature.

Section 3. It shall be unlawful for any person, persons, corporations or associations to slaughter any animal on any premises in the City of Hialeah, Florida, except those properly zoned as a slaughter house, and meeting all the health, safety and sanitation codes prescribed by the City for the operation of a slaughter house.

. . . .

Section 6. This Ordinance shall not apply to any person, group, or organization that slaughters, or processes for sale, small numbers of hogs and/or cattle per week in accordance with an exemption provided by state law.

CITY OF HIALEAH RESOLUTION NO. 87-66
Adopted June 9, 1987

WHEREAS, residents and citizens of the City of Hialeah have expressed their concern that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety, and

WHEREAS, the Florida Constitution, Article I, Declaration of Rights, Section 3, Religious Freedom, specifically states that religious freedom shall not justify practices inconsistent with public morals, peace or safety.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

1. The City reiterates its commitment to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace or safety.

CITY OF HIALEAH RESOLUTION NO. 87-90
Adopted August 11, 1987

WHEREAS, the residents and citizens of the City of Hialeah have expressed their concern regarding the possibility of public ritualistic animal sacrifices in the City of Hialeah, Florida; and

. . . .

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, that:

Section 1. It is the policy of the Mayor and City Council of the City of Hialeah, Florida, to oppose the ritual sacrifices of animals within the City of Hialeah, Florida. Any individual or organization that seeks to

practice animal sacrifice in violation of state and local law will be prosecuted.

WEST'S FLORIDA STATUTES ANNOTATED
CHAPTER 828. CRUELTY TO ANIMALS

828.12. Cruelty to animals

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily or cruelly beats, mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or by a fine of not more than $5,000, or both.

828.22. Humane slaughter requirement

. . . .

(2) It is therefore declared to be the policy of this state to require that the slaughter of all livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those employed in other states where humane slaughter is required by law and to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder.

(3) Nothing in this act shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this act. For the purposes of this action the term "ritual slaughter" means slaughter in accordance with § 828.23(7)(b).

828.23. Definitions

As used in §§ 828.22 to 828.26, the following words shall have the meaning indicated:

. . . .

(7) "Humane method" means either:

(a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical, or other means that are rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) A method in accordance with ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

828.24. Prohibited acts; exemption

(1) No slaughterer, packer, or stockyard operator shall shackle, hoist, or otherwise bring livestock into position for slaughter, by any method which shall cause injury or pain.

(2) No slaughterer, packer, or stockyard operator shall bleed or slaughter any livestock except by a humane method.

(3) This act shall not apply to any person, firm or corporation slaughtering or processing for sale within the state not more than 20 head of cattle nor more than 35 head of hogs per week.

CONSTITUTION OF THE UNITED STATES

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CODE

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.